



#8/Appeal Brief
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2-3-04

Attorney's Docket No.: 34580.001CC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:

Paul Swift

Group Art Unit No.: 3682

Examiner: Vinh Luong

Telephone: (703) 308-3221

Serial No.: 09/95⁷⁵7,417

Filed: 10/10/2001

For the Invention of:

BICYCLE PEDAL THAT CAN FIT A
MULTIPLICITY OF SHOE CLEATS

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APPELLANT'S BRIEF (37 C.F.R. § 1.192)

This brief is in furtherance of the Notice of Appeal filed in this case on November 4, 2003. The fees required under 37 C.F.R. § 1.17(f) and any required petition for extension of time for filing this brief and fees therefor are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF. This brief is transmitted in triplicate (37 C.F.R. § 1.192(a)).

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STATUTES AND RULES

35 U.S.C. § 102..... 2, 3, 11, 12,
14, 15, 16, 21, 25

REAL PARTY IN INTEREST

The Real Party In Interest is the Inventor:

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RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

The above identified Patent Application Serial No. 09/975,417, filed on October 10, 2001 hereafter the "Appellant 's Application" or "'417 Application") has a total of Eight (8) claims of which four (4) are still pending in the case. The status of the claims of the '417 Application is as follows:

Claims cancelled: Claims 1 through 4;

Claims pending: Claims 5 through 8;

Claims allowed: none;

Claims rejected: Claims 5 through 8; and

Claims on appeal: Claims 5 through 8.

STATUS OF AMENDMENT FILED FROM WHICH A FINAL REJECTION IS APPEALED

The '417 Application was filed on October 10, 2001 and was a continuation-in-part of Application Serial No. 09/360,561 filed on May 26, 1999 which was a continuation-in-part of Application Serial No. 08/923,022 filed on September 3, 1997. Application Serial No. 08/923,022 filed on September 3, 1997 became abandoned after the continuation-in-part application Serial No. 09/360,561 filed on March 26, 1999 was filed. Similarly, Application Serial No. 09/360,561 filed on May 26, 1999 became abandoned after the present application

1 Serial No. 09/975,474 filed on 10/10/2001 was filed.

2
3 In a first Office Action mailed on January 15, 2003, Patent Examiner Luong had a
4 number of bases for rejection. First, the Examiner objected to the arrangement of the
5 specification. Second, the Examiner rejected Claims 1 through 4 under 35 U.S.C. § 102(e) as
6 being anticipated by United States Patent 6,035,743 filed on March 18, 1998 and issued on
7 March 14, 2000 to Gapinski (hereafter "Gapinski Patent"). The Examiner also rejected Claims 1
8 through 4 under 35 U.S.C. § 112, second paragraph.

9
10 In response to this Office Action, the Appellant submitted the following: First, the
11 Appellant submitted a "CLEAN" VERSION OF AMENDED SPECIFICATION OF PATENT
12 APPLICATION OF INVENTION ENTITLED "BICYCLE PEDAL THAT CAN FIT IA
13 MULTIPLICITY OF SHOE CLEATS". This was submitted on May 27, 2003 along with the
14 Response to the First Office Action. The Appellant also submitted a "MARKED UP" VERSION
15 OF AMENDED SPECIFICATION OF PATENT APPLICATION OF INVENTION ENTITLED
16 "BICYCLE PEDAL THAT CAN FIT IA MULTIPLICITY OF SHOE CLEATS". That was also
17 filed on May 27, 2003. Further, the Appellant submitted a complete copy of the prosecution
18 history of Parent Application Serial No. 08/923,022 filed on September 3, 1997 by inventor Paul
19 Swift, which was also examined by the current Examiner Vinh Luong. The Appellant also
20 submitted an extensive RESPONSE TO FIRST AND NON-FINAL OFFICE ACTION UNDER
21 37 CFR § 1.111 wherein Claims 1 through 4 were cancelled and newly added Claims 5 through 8
22 were added and argued for allowance.

23
24 The complete Response to First and Non-Final Office Action along with the above-
25 referenced enclosures was mailed by Express Mail to the Patent Office on May 27, 2003.
26 Concurrently filed with that document was a Request for Two-Month Extension of Time with the
27 appropriate fee paid. Therefore, the amendment was timely filed.

1 In response to this Response to First and Non-Final Office Action, Examiner Vinh Luong
2 issued a second Office Action on August 5, 2003 wherein Examiner Luong withdrew the
3 rejection under 35 U.S.C. § 112 but continued to maintain the rejection under 35 U.S.C. § 102(e)
4 based upon the Gapinski Patent and rejected Claims 5 through 8. The rejection was made final.

5
6 No amendment has been filed after the Examiner's final Office Action with a final
7 rejection mailed on August 5, 2003. The Appellant filed a timely Notice of Appeal on
8 November 4, 2003. An exact copy of Claims 5 through 8 on appeal as they were filed in the
9 Response to First and Non-Final Office Action is attached as Appendix I of this brief. In
10 addition, the Appellant is proposing some very minor wording changes to Claims 5, 6 and 7
11 which if the Patent Office Board of Appeals will accept them based on the Applicant's
12 arguments, should certainly bring the present invention into condition for allowance although it
13 is believed that the claims of invention as they are currently pending in the case are certainly
14 allowable as well. The claims with the minor modifications with words crossed out in element
15 (b) of Claim 5, element (b) of Claim 6 and element (b) of Claim 7 and new words added to
16 substitute for those crossed out words in element (b) of Claim 5, Claim 6 and Claim 7 is attached
17 hereto as Appendix II.

SUMMARY OF INVENTION

The present invention is device for improving the fitting of a cyclist to a bicycle which takes into account key aspects of the physiology of the cyclist's body and in particular certain intrinsic structural relationships of the human foot and knee, which invention when applied to the fitting of a cyclist on a bicycle results primarily in improved comfort of the cyclist and a reduction in fatigue while cycling.

Tests have also shown that the cyclist, when fitted to his bicycle using the present invention, experiences a reduction in oxygen consumption and a decrease in heart rate while pedaling at a submaximal level and an increase in power applied to the pedals.

The present invention addresses the problem of fitting in a new way. It starts with the position of the cyclist's foot on the pedals and works up the legs to the torso and the hands. The present invention focuses first on the fitting (or positioning) of the cyclist's foot, which is the point where power is applied to the bicycle pedal by the cyclist. An object and advantage of the present invention compared to the current art is the addition of carefully selected wedges to the base of the cyclists shoe, generally under the cleat, which rotates the shoe to match the natural varus or valgus condition of the cyclist's forefoot. This improvement along with better hand placement on the handlebars and the use of specially designed hand grips, has been found by testing to allow an increase in power applied by the cyclist to the pedals for the same amount of energy expended by the cyclist.

Further, the addition of these wedges removes the tendency for the cyclist's knee to move in a lateral direction, to one side then the other, as seen when viewing the cyclist from the front during a complete pedal rotation. Another object of the present invention is the removal of this lateral (sideways) deflections of the knee joint, or rotational knee movement, when viewed from in front of the cyclist, which reduces the sideways strain on muscles and tendons in the leg and

1 foot which in turn reduces fatigue while cycling.

2
3 Another object and advantage of the present fitting invention is to lock the cyclist's shoe
4 onto the pedal fitting device so that full power can be applied by the cyclist throughout the entire
5 rotation of the pedals so that correct fitting measurements can be made. In the current art of
6 pedal mounted devices which are used for fitting a cyclist to a bicycle, the cleat of the cyclist's
7 shoe sits inside an open cavity on the top of the device, designed such that the cyclist cannot
8 apply any upward force or apply full power to the pedal through the cleat, otherwise the cleat
9 comes out of engagement with the pedal mounted device. The present invention locks the cleat
10 onto the pedal mounted device in a manner that simulates an actual locked cleat/pedal condition.

11
12 Another object of the present invention is to avoid the overuse and asymmetric muscular
13 development that occurs when the cyclist's forefoot is forced into a flat position in relation to the
14 pedal as occurs in the current art. When the forefoot is forced into the flat position, the cyclist's
15 knee is pulled in or out of alignment which also causes the patella to be pulled, resulting in over
16 development of the muscles attached to the patella, such as the vastus lateralis muscle on the
17 outside of the cyclist's leg, and underdevelopment of the vastus medialis muscle on the inside of
18 the leg.

19
20 A measurement has been made of the amount of lateral or sideways movement that
21 occurs in a knee when cycling with a flat forefoot condition as is the current standard in the art.
22 The knee's sideways movement was as much as 2 inches side to side. In a 50 mile distance with
23 a cyclist pedaling at 82.5 rpm and a speed of 15 miles per hour, the knee actually travels an extra
24 12.5 miles side to side.

25
26 Significant inertial forces are also created in the leg of the cyclist by the misaligned
27 forefoot, which then continuously changes the horizontal location of the cyclist's knee during the
28 pedal rotation. The extra energy required to supply this motion is considerable when compared

1 with a knee which is moving in the vertical direction only, with no sideways motion.

2
3 It is another object and advantage of the present invention to minimize this wasted energy
4 by adding wedges under the cyclist's shoe such that the inside sole of the cyclist's shoe is at the
5 same angle as his natural forefoot angle or cant thus eliminating unnecessary horizontal
6 movement of the knee.

7
8 Another object and advantage of the present invention is the adjustment of the cyclist's
9 shoe to account for the forefoot cant angle, which spreads the pressure generated on the sole of
10 the cyclist's foot when force is applied to the pedal through the sole of the shoe and the cleat in a
11 more optimum and natural manner. The metatarsal heads of the 5 digits will have the correct
12 distribution of load.

13
14 If the forefoot is forced into the flat position, as in the current art, there is already a
15 misalignment of force applied to the foot sole through the metatarsal heads, or the balls of the
16 foot, which can cause pain and discomfort in the outer portion of the foot. Cyclists who have
17 been fitted with the current art devices which create a flattened forefeet condition on the pedal
18 had previously reported their feet 'going to sleep' during cycling. When fitted according to the
19 present invention, cyclists have reported greatly improved feet conditions during and after a race.

20
21 The invention also measures and corrects for the natural angle that exists between the
22 heel and forepart of the human foot in the neutral or relaxed position by the use of angled wedges
23 positioned under the sole of the cyclist's shoe, thus holding the foot on the pedals in a neutral,
24 relaxed position. This correction reduces the lateral or side-to-side motion of the cyclist's knee
25 or patella when cycling. This reduced side-to-side motion of the knee, and correspondingly
26 reduced rotation of the tibia, contributes to a reduction in fatigue and also reduced oxygen
27 consumption by the cyclist. The invention also results in increased power applied by the cyclist
28 to the bicycle pedal, thus improving his cycling performance.

1 Proper fitting allows cyclists to be more comfortable, have better energy conservation,
2 perform up to their potential and prevent the overuse injuries to their bodies that can result from
3 poor fitting of the cyclist to the bicycle.

4
5 Some of the many advantages of the present invention when used on exercise bikes and
6 other cycling equipment are:

- 7 (a) it includes a stronger spindle that greatly reduces the frequency of breakage that
8 commonly occurs on stationary exercise or spin bikes.
- 9 (b) it allows the immediate use of an exercise bike by the majority of cyclists who
10 wear shoe cleats made by LOOK (road style pedal), SPD (mountain style pedal)
11 and SPEEDPLAY X-pedal (road style pedal) or SPEEDPLAY Frog (mountain
12 style pedal).
- 13 (c) exercise clubs do not have to inventory a wide variety of pedals for their exercise
14 bikes to meet the needs of their clients.
- 15 (d) exercise clubs can standardize their exercise bikes to one type of pedal design
16 which will now fit the largest majority of rider's bicycle shoes.
- 17 (e) the rider can wear his favorite cycling shoes and cleat type, while exercising in the
18 gym without having to change anything.
- 19 (f) the rider does not have to carry a pedal wrench and spare pedals to the gym when
20 he goes to exercise on the gym's exercise bikes.
- 21 (g) the rider does not have to change the pedals on the gym's exercise bike to fit his
22 shoe cleats before he can ride the exercise bike.
- 23 (h) sports and exercise clubs can offer a wide combination of pedal/cleat designs on
24 all their exercise bikes, while fitting all of their bikes with only the flip-flop
25 pedals and adapters of the present invention.
- 26 (i) the frequency of breakage of pedal spindles is reduced when the invention is used
27 on exercise bikes.
- 28 (j) the sports club does not have to carry such a large inventory of spare pedals in the

event of breakage of pedal spindles.

- (k) maintenance of exercise bikes is reduced due to the more reliable pedal-spindles of the invention.
- (l) the risk of liability to the sports club is reduced due to the reduction of injuries associated with breakage of the pedal spindles.
- (m) it allows the sports club to advertise their bikes to a broader range of public.
- (n) it reduces the occurrence of pedal crank-thread stripping on exercise bikes in gyms, which is caused by too frequent change of pedals by various riders.
- (o) individuals may purchase their own flip-flop pedals and adapters and bring them for use at an exercise club which has not purchased these pedals for their exercise bikes, and so individuals can exercise wearing their own preferred cycle shoes.

Accordingly, it can be seen that the pedal and pedal adapters of the present invention can accommodate a wide variety of the bicycle shoe sole cleats in use today. By accommodating the use of bicycle shoes fitted with LOOK (road), SPD (mountain), SPEEDPLAY (road) X-Pedal and SPEEDPLAY (mountain) Frog shoe cleats, the invention covers about 95% of all of the cleat designs presently in use on spin bikes and on road bikes. In addition, use of the invention will allow exercise clubs to offer their clients a wide variety of options in pedal/shoe cleats so that they can use their favorite shoes at the gym without having to change their shoes or the cleats that are already on their shoes. The invention will allow the exercise clubs to minimize costs, as they will no longer have to purchase a variety of extra pedals not offered by individual manufacturers.

Although the invention disclosed above contains many specifics, these should not be construed as limiting the scope of the invention but as merely providing illustrations of some of the presently preferred embodiments of the invention. For example, the flip-flop pedal can have other shapes, as long as the connecting surfaces are compatible with LOOK (road) and SPD (mountain). Also, the adapter plates to accommodate the two types of SPEEDPLAY (road) pedal cleats can also be designed to fit onto an SPD (mountain) style pedal rather than the preferred

1 LOOK (road) style pedal, etc. Thus the scope of the invention should be determined by the
2 appended claims and their legal equivalents, rather than by the limitations suggested in the
3 examples given.

4
5 For ease of understanding of this invention, attached to this brief as Appendix III is a
6 complete copy of all of the figures. The Appellant will now explain the heart of the present
7 invention.

8
9 Referring to Figures 7a, 7b, 7c, 18, 19, 20, 21 and 22, there is shown at 570 the present
10 invention flip-flop bicycle pedal. The present invention flip-flop bicycle pedal 570 is a
11 combination of the first prior art bicycle pedal 500 (see Figure 12) and the second prior art
12 bicycle pedal 504 (see Figures 13 and 14). The flip-flop bicycle pedal 570 comprises a main
13 body 199 and a threaded spindle bolt or connector 200 which is threadedly connected to a bicycle
14 pedal crank (not shown), where the main body 199 is pivotable about a transverse axis 574 of the
15 bicycle. The main body 199 has a top or first side 576 and a bottom or second side 578. The top
16 side 576 is similarly configured with the first prior art bicycle pedal 500 (see Figure 12) and
17 includes a toe cleat clamping mechanism which has a front recess 202 for receiving the front
18 tongue 224 of the first prior art shoe cleat (see Figures 8a and 8b), a rear spring-loaded plate 204
19 pivotably connected to the main body 199 by a bolt 205 and an internal spring 580 wound around
20 the bolt 205. When a force is applied at a surface 207 by the first prior art shoe cleat (see Figure
21 19 and shown in dashed lines), the spring-loaded plate 204 moves away from the main body 199
22 such that the rear tongue 226 (see Figure 20 and shown in dashed lines) of the first prior art shoe
23 cleat falls inside the recess 209 and the spring-loaded plate 204 springs back into a locking
24 position, thereby locking the first prior art shoe cleat to the top side of the main body 199 of the
25 flip-flop pedal 570.

26
27 The bottom side 578 of the flip-flop bicycle pedal 570 is similarly configured with the
28 second prior art bicycle pedal 504 (see Figures 13 and 14) and includes a toe cleat clamping plate

1 or mechanism 212 which is smaller than the toe cleat clamping mechanism located on the top
2 side 576. The toe cleat clamping mechanism 212 is mounted to the main body 199 by retaining
3 screws 214 and 215 (see Figure 18). The front tongue 512 of the second prior art shoe cleat 510
4 (see Figure 23) is first inserted into the locking feature 208 while the rear tongue 514 engages
5 with and pushes against the spring-loaded retaining plate 216 (see Figure 21 and shown in dashed
6 lines) causing the spring-loaded plate 216 to move back (see Figure 22 and shown in dashed
7 lines). A spring 582 is held in place by a bolt 211 (see Figure 7b) mounted in the main body 199
8 of the flip-flop bicycle pedal 570. The spring 582 is wound around the bolt 211. When a force
9 is applied on the spring-loaded plate 216 by the second prior art shoe cleat (see Figure 21 and
10 shown in dashed lines), the spring-loaded plate 216 moves away from the main body 199 (see
11 Figure 22 and shown in dashed lines) such that the rear tongue 514 of the second prior art shoe
12 cleat 510 falls inside the recess 210 and the spring-loaded plate 216 springs back into a locking
13 position, thereby locking the second prior art shoe cleat 510 to the bottom side 578 of the main
14 body 199 of the flip-flop pedal 570.

15
16 The present claims of invention relate and focus on this specific embodiment.
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THE EXAMINER'S RATIONALE

The Examiner's rationale is an extremely long and extensive brief which Applicant's attorney has found to be the longest brief ever issued by an Examiner in Applicant's attorney's 25 years of practicing patent law. However, to simplify the Examiner's rationale for the Patent Office Board of Appeals, the Appellant will attempt to distill the heart of what the Patent Examiner is trying to say.

In a first Office Action mailed on January 15, 2003, the Patent Examiner has rejected the then pending Claims 1 through 4 under 35 U.S.C. § 102(e) on the grounds that the invention is disclosed in the Gapinski Patent. The Examiner is using co-pending Gapinski reference which was co-pending but filed subsequent to the Applicant's original first grandparent case filed on September 3, 1997 to reject the application. The heart of the Examiner's rationale is found in Item No. 7 in the first Office Action in which the Examiner states "At the outset, note that this application is a Continuation-In-Part (CIP) of application Serial No. 09/360,561 (SN '561) filed on May 26, 1999 which is a CIP of application Serial No. 08/923,022 (SN '022) filed on September 3, 1997. Only the common part of this application and SN '022 are entitled to the filing date of September 3, 1997. See MPEP 201.08. Since applicant now claims, e.g., "a rear spring-loaded retaining plate" which is not disclosed in SN'022, therefore, the claims in this application are not entitled to the filing date of SN'022. In other words, since: (a) the claims in this application are drawn to new Figs. 18-22 of this application as described on page 30 et seq. of the specification; and (b) these new Figs. 18-22 were not disclosed in SN'022 and SN'561, therefore, these claims are entitled to the filing date of October 10, 2001 of this application only. The US Patent No. 6,035,743 was filed on March 18, 1998, i.e., before the filing date of October 10, 2001 of this application and before the filing date of May 26, 1999 of the parent application SN'561. Thus, Pat. '743 is qualified under 35 USC 102(e) to reject the claims of this application."

1 Therefore, the initial heart of the Examiner's rationale which is the major subject of this
2 appeal is that he is citing the Gapinski Patent as a 35 USC § 102(e) reference because the
3 Examiner is not giving credit to the original Appellant's grandparent filing date of September 3,
4 1997. The Appellant very strongly and strenuously disagrees with what the Examiner has said
5 and done as will be set forth in the next section.

6
7 The Examiner then cited the Gapinski Patent to reject Claims 1 through 4 on the grounds
8 that all of the elements of Claims 1 through 4 were disclosed. Since those claims have been
9 cancelled, the Appellant will discuss the Examiner's rationale in the final Office Action for
10 pending Claims 5 through 8.

11
12 The Examiner also rejected the claims under 35 U.S.C. § 112. However, since that claim
13 rejection has been withdrawn, the Appellant will not discuss in detail what the Examiner's
14 rationale was because that point is now moot.

15
16 In the final Office Action mailed on August 5, 2003, the Examiner continued to maintain
17 the rationale that the Appellant could not receive credit for the earlier filing date of the original
18 grandparent case filed on September 3, 1997 for essentially the same logic and reason as set forth
19 above.

20
21 The Examiner then essentially goes through Claims 5 through 8 of the amendment filed
22 on May 27, 2003 by the Appellant to argue that every single element is disclosed in Gapinski.
23 While the Appellant maintains that Gapinski never should be cited as a reference to begin with,
24 rather than go through the extensive arguments of the Examiner, the Appellant will highlight the
25 key points where the Appellant believes that the Examiner's rationale is wrong. Specifically, the
26 key points of the Examiner's rational in the final Office Action which the Patent Office Board of
27 Appeals should consider are as follows: beginning in the last paragraph on Page 9 of the final
28 Office Action, the Examiner states "In summary, Figs. 7a-c of this Appl.417 *essentially* does not

1 disclose the present invention as claimed in claims 5-8 of this application due to the fact that
2 Figs. 7a-c fail to show, among other things, the *essential or critical subject matter, i.e.,* the
3 spring(s) that bias(es) the plates as claimed.”
4

5 Going further to Page 10 in the first full paragraph the Examiner states “Fifth, applicant
6 discusses certain key differences between the present invention as claimed and Gapinski patent
7 (page 13 of Paper 5). Appellant contends that applicant’s cleat is affixed to the shoe, then to the
8 pedal, meanwhile, Gapinski’s cleat is not fixed to the shoe but is fixed to a full pedal adapter
9 where the shoe itself is inserted into the pedal adapter (page 14, Paper 5).
10

11 Appellant apparently overlooks the fact that applicant’s claims 5-8 call for the pedal, not
12 the process of using the pedal. The argument about the intended use of applicant’s pedal is not
13 accorded patentable weight.” Appellant very strenuously disagrees with this. The Gapinski Patent
14 is for a totally different device and therefore, it clearly should not be considered prior art. It also
15 does not disclose the Applicant’s invention
16

17 Finally, the Examiner argues on Page 11, “Sixth, applicant strenuously states that Fig. 5
18 of Gapinski shows that the method by which the cleat of Gapinski is attached and disattached is
19 totally different from the applicant’s method (page 14, Paper 5). Nevertheless, applicant’s claims
20 are not method claims. The examiner respectfully submits that the Court has long laid
21 applicant’s arguments to rest by pointing out that when each element of a patent claim is found in
22 one prior art reference, the patent claim is invalid, and the invention is said to be anticipated as a
23 matter of law.” This is another key point wherein the Appellant totally disagrees with the
24 Examiner. The devices work differently because they are clearly intended for different purposes.
25 Therefore, these are the key points on which the issues rest.
26
27
28

1 **ISSUES**

2 1. Whether it is proper for the Patent Examiner to cite the Gapinski Patent which was filed
3 on March 18, 1998 as a bar to the Applicant's invention under 35 U.S.C. § 102(e) and not
4 give credit to the Applicant's original grandparent case filed on September 3, 1997 or
5 whether the Examiner is wrong and in fact, Applicant's claims as presently set forth are
6 in fact supported by the original text of grandparent Patent Application Serial No.
7 08/923,022 filed on September 3, 1997.

8
9 2. Whether or not the essential elements of the present invention are disclosed in the
10 Gapinski Patent and therefore bar the present invention under 35 U.S.C. § 102(e).

GROUPING OF CLAIMS

1. Grouping of Claims as Applied to Issue 1

The Examiner has rejected all pending claims of invention, Claims 5 through 8, under 35 U.S.C. § 102(e) over Gapinski. All 4 pending claims stand or fall and are grouped into one patentable group and the determination for the Patent Office Board of Appeals is to determine whether or not in fact Claims 5 through 8 should be rejected under 35 U.S.C. § 102(e) in view of Gapinski.

2. Grouping of Claims as Applied to Issue 2

The same issues apply to the rejection under Gapinski as it is to Issue 1. Assuming the Patent Office Board of Appeals wishes to side with the Examiner and permit Gapinski to be allowed as citable art under 35 U.S.C. § 102(e), then it is the position of the Appellant that Gapinski does not disclose the present invention and therefore, Claims 5 through 8 are allowable over Gapinski. All four claims stand or fall and are grouped into one patentable group and determination of the Patent Office Board of Appeals to determine whether or not in fact Claims 5 through 8 should be rejected under 35 U.S.C. § 102(e) in view of Gapinski.

ARGUMENTS

I. It Is Erroneous to Cite the Gapinski Patent Which Was Filed on March 18, 1998 Against the Present Application Because the Present Application Should Be Accorded Priority Back to the Grandparent Case Filed on September 3, 1997 and All of the Claims of Invention as Presently in the Case Are Supported by the Original Disclosure in the Grandparent Case and Therefore, it Is Erroneous to Cite the Gapinski Patent at All under 35 U.S.C. § 102(e)

The Examiner's rationale has been set forth in detail in a prior section. It is respectfully submitted that the Examiner's rationale is totally wrong. The Patent Office Board of Appeals is therefore strongly urged to reverse the Examiner on this critical point in the prosecution of this case.

Specifically, just to repeat the heart of the arguments, The Examiner states that "Since Appellant now claims, e.g., 'a rear spring-loaded retaining plate' which is not disclosed in SN'022 (referring to Serial No. 08/923,022 filed on September 3, 1997), therefore, the claims in this application are not entitled to the filing date of SN'022. In other words, since: (a) the claims in this application are drawn to new Figs. 18-22 of this application as described on page 30 et seq. of the specification; and (b) these new Figs. 18-22 were not disclosed in SN'022 and SN'561, therefore, these claims are entitled to the filing date of October 10, 2001 of this application only." The Appellant very respectfully disagrees with the Examiner and based upon the modifications that were made by the Appellant to bring the present '417 Application into a more coherent format, it is understood why the Examiner may not have appreciated that the flip-flop pedal as currently being claimed by the Appellant was in fact fully disclosed in the patent application which was filed on September 3, 1997.

The Appellant submitted a complete copy of the prosecution history of the Applicant's grandparent Case 08/923,022 filed on September 3, 1997 which is of record in this case. The

1 Patent Office Board of Appeals is respectfully requested to review the prosecution history
2 because it is critical to the Applicant's argument to show that the disclosure in the prosecution
3 history of the grand parent case 08/923,022 filed on September 3, 1997 does support the present
4 claims of invention.

5
6 When redoing the present application, in order to make it more consistent and flow better,
7 the Appellant made the following drawing number changes (but did not modify in any way any
8 of the drawings). Specifically, former Figures 6a, 6b, 7a and 7b were changed to Figures 5a, 5b,
9 6a and 6b in the revised continuation-in-part patent application being considered by this
10 Examiner. Former Figures 5a, 5b, and 5c were now changed to Figures 7a, 7b and 7c. Once
11 again, it is emphasized that the figures have not been changed in any way and no new matter has
12 been added but the numbering of the figures has simply been rearranged in order to make them
13 flow better and more logically in the patent application.

14
15 Basically, Figures 7a, 7b, and 7c (formerly Figures 5a, 5b and 5c in the originally filed
16 Patent Application 08/923,022 filed on September 3, 1997) essentially disclose the present
17 invention as claimed. Therefore, the disclosure as will be discussed below has a priority date of
18 September 3, 1997 and therefore, the Gapinski Patent is not prior art to the present application.

19
20 Referring specifically to Figures 5a, 5b and 5c (which correspond to Figures 7a through
21 7c of the present '417 Application), there is illustrated a bicycle pedal that has two different
22 mechanisms for connecting to two different shoe cleats, one being a road type bicycle shoe cleat
23 and the other being a mountain type bicycle shoe cleat. The top view Figures 5a discloses the
24 pedal for accommodating a road type bicycle shoe cleat. What makes it a road type bicycle shoe
25 cleat is that typically this type of platform connects to a pedal system. A road type is bigger than
26 a mountain bicycle type. Figure 5a is a top view and Figure 5b is a side view of a pedal for
27 connecting to a road type bicycle shoe cleat and Figure 5c is a top plan view of a pedal for
28 connecting to a mountain bicycle type shoe cleat.

1 The Appellant will now compare what is shown in Figure 18 of the present application to
2 what is shown in Figures 7a through 7c (taken identically from Figures 5a through 5c in the
3 grandparent case) to show that everything that the Appellant is disclosing and claiming in the
4 present '417 Application was in fact disclosed in the original application filed on September 3,
5 1997. Referring to Figure 18, the flip-flop bicycle pedal 570 comprises a main body 199
6 extending through a threaded spindle bolt or connector 200. The threaded spindle bolt or
7 connector which we have in the sequence of numbers 7a, 7b and 7c and Figure 18 is threadedly
8 connected to a bicycle pedal crank where the main body is pivotable about a transverse axis 574.
9 The main body has a top or first side 576 and a bottom or second side 578. Top first side 576 is
10 comparable to the views in Figures 7a and 7b and the bottom or second side 578 is comparable to
11 view in Figure 7c.

12
13 The top side 576 is similarly configured to the first prior bicycle pedal 500 (see Fig. 12)
14 and includes a toe cleat clamping mechanism which has a front recess 202 for receiving the front
15 tongue 224 of the first prior art shoe cleat (see 8a and 8b), a rear spring loaded plate 204 (please
16 note that 202 and 204 are also shown in Figure 7b) pivotably connected to the main body 199 by
17 a bolt 205 which is shown at the bottom of Figure 7b and an internal spring 580 wound around
18 bolt 205. The bolt 205 which is shown in Figure 7b (and originally in Figure 5b from the parent
19 patent text) is shown without the spring but we can examine the original patent text to show that
20 the concept of the spring is clearly disclosed. Referring specifically to the original patent text on
21 Page 9, the first full paragraph reads: "Figure 5a shows a top view of the LOOK compatible flip-
22 flop pedal. The top side consists of a toe clamp (202) which holds the front of the cyclist's
23 LOOK compatible cleat (not shown). A spring plate (204) moves back when the cleat is inserted
24 and snaps forward to lock the cleat on the pedal." Therefore, it is abundantly clear that the spring
25 action which is talked about is clearly intended and clearly discussed in the patent text.
26 Obviously, it could not spring back in that way unless there was a spring tension that was causing
27 it to spring back as discussed in the text. For purposes of clarity, in Figure 18, the spring 580 has
28 been shown but it is abundantly clear that it is about a bolt 205 which was fully disclosed in the

1 original grandparent text.

2
3 The above is the entire heart of the entire argument that stubborn Examiner Luong is
4 refusing to allow for the Applicant. The Examiner is stubbornly sticking to the fact that because
5 the spring itself was not actually illustrated in the original grandparent case, Appellant cannot
6 obtain credit for the fact that the spring is part of the original grandparent case. This is simply
7 unfair and wrong. Specifically, as set forth above, the specific portions of the patent text as
8 discussed above specifically talk about a spring plate 204. Further, an examination of Figure 5b
9 of the original grandparent case very clearly shows the bolt around which the spring is wound in
10 direct conformity with the spring plate 204. Obviously, there is no question that with the bolt
11 shown, and the text describing it as a spring plate, it is the most minimum common sense as well
12 as reasonableness to conclude that the spring plate has a spring actuation by a spring being
13 wound around the bolt. Therefore, the fact that this was illustrated for more clarity in Figure 18
14 is not adding new matter whatsoever. This is the heart of the argument that the Appellant is
15 making and the heart of the argument that the Examiner is refusing to accept. The fact is that the
16 device as disclosed and claimed in the original parent case clearly shows the spring plate.
17 Clearly, the spring plate cannot operate unless there is a spring to actuate it. It is therefore
18 reasonable to conclude that there is a spring around the bolt which is clearly illustrated in the
19 original 5b to actuate the spring plate. The Patent Office Board of Appeals should therefore
20 overturn the Patent Examiner's stubborn refusal to accept this and use a totally unrelated device
21 to reject the Appellant's invention because the Examiner is refusing to grant the Appellant the
22 original filing date of the grandparent case because the Examiner is refusing to allow the
23 Appellant to have the spring which actuates the spring plate.

24
25 When a force is applied at a surface 207 as shown in both the first prior art shoe cleat (see
26 Figure 19 and shown in dashed lines), the spring loaded plate 204 moves away from the main
27 body 199 such that the rear tongue 226 (see Figure 20 and shown in dashed lines) of the first
28 prior art shoe cleat falls inside the recess 209. The spring loaded plate springs back into a

1 locking position, thereby locking the first prior art shoe cleat to the top side of the main body of
2 the flip-flop pedal. This entire concept was clearly discussed in the portion of the quoted text
3 from the original grandparent patent application filed in September 1997.

4
5 The bottom side 578 which is the equivalent of Figure 7c (formerly Figure 5c of the
6 parent case) of the flip-flop bicycle pedal 570 is similarly configured with the second prior art
7 bicycle pedal 504 and includes a toe cleat clamping plate or mechanism 212 which is shown in
8 Figures 7c and 5c. The bottom side 570 of the flip-flop bicycle pedal 570 is similarly configured
9 with a second prior art bicycle pedal 504 and includes a toe cleat clamping plate or mechanism
10 212 (this is shown in the original Figure 5c) which is smaller than the toe cleat clamping
11 mechanism located on the top side 576 and that is also shown. The toe cleat clamping
12 mechanism 212 is mounted to the main body 199 by retaining screws 214 and 218 and this is
13 shown in the original patent drawings from the grandparent case Figure 5a as retaining screw 214
14 and the other one, even though not labeled, is also shown in original Figure 5c and has now been
15 numbered as 215 in Figure 7c.

16
17 The front tongue 512 of the second prior art shoe cleat 510 (see Figure 23) is first inserted
18 into the locking fixture 208. Fixture 208 is shown in Figure 5c and also in now Figure 7c. The
19 rear tongue 514 engages with and pushes against the spring loaded retaining plate 216.

20
21 Further, a spring 582 is held in place by a bolt 211. The bolt is shown in Figure 5b. It is
22 mounted on the main body 199 to the flip-flop bicycle pedal 570. The spring 582 is wound
23 around the bolt 211 which we say is shown in Figure 5b. When a force is applied on the spring
24 loaded plate 216 by a second prior art shoe cleat, the spring loaded plate moves away from the
25 main body (see Figure 22) such that the rear tongue 514 of the second prior art shoe cleat falls
26 inside the recess 210 and the spring loaded plate 216 springs back into a locking position, thereby
27 locking the second prior art shoe cleat 510 to the bottom of the main body. Referring once again
28 to the text of the original grandparent patent application filed in September 1997, and again

1 referring to Page 9, beginning with the third full paragraph it states "Figure 5c shows a bottom
2 view of the SPD compatible flip-flop pedal. The cleat toe clamp (214) holds the toe of the SPD
3 compatible cleat and the spring loaded heel clamp (208) is pushed back under the downward
4 movement of the cleat and finally springs forward to lock the SPD compatible cleat onto the
5 pedal (213)." Therefore, once again, it is abundantly clear that the spring loaded feature was
6 disclosed and discussed and illustrated in the original grandparent patent application and
7 therefore, this concept which was clearly fully illustrated and discussed in the patent application
8 should be awarded the date of the earlier parent case.

9
10 Therefore, for all of the above reasons, it is very respectfully submitted that the key
11 features which are being disclosed and claimed in the present invention do have full antecedent
12 support both in terms of the drawings and the patent text in the originally filed case of September
13 3, 1997 and therefore, should be awarded the earlier filing date and therefore, Gapinski should
14 not be cited as a 35 U.S.C. § 102(e) reference.

15
16 **II. While it Is Strongly Argued That the Gapinski Patent Should Never Be Cited to**
17 **Begin with for All of the Reasons Very Clearly Argued in Issue I Above, as a**
18 **Further Emphasis, the Appellant Points out Very Clearly Why the Present**
19 **Invention Is Not Obvious and Not Disclosed by Gapinski, Even under 35 U.S.C.**
20 **§ 102(e)**

21 The Appellant will now discuss why there are certain key differences between the present
22 invention as claimed and the Gapinski Patent. First, it is abundantly clear that the Gapinski
23 Patent is focusing on a totally different type of attachment device. Specifically, as illustrated in
24 the exploded view of Figure 1 of the Gapinski Patent, what is sought to be attached is a pedal
25 adapter wherein the person fits the shoe inside the pedal adapter 62. That is totally different from
26 the entire concept as disclosed and discussed in the present invention where the cleat is affixed to
27 the shoe and then attached to the present invention flip-flop pedal. In Gapinski, the cleat is not
28 affixed to the shoe but the cleat of Gapinski is attached to a full pedal adapter where the shoe

1 itself is inserted into the pedal adapter. In addition, the fundamental principle by which the cleat
2 is locked onto the adapter is totally different in the Gapinski Patent. Specifically, referring to the
3 Gapinski Patent in Column 3, beginning on line 56 it states "A pivoting member 76, forming part
4 of the locking mechanism structure 77, is positioned on the base member 50 between the front 44
5 and the rear 46 edges thereof. The pivoting mechanism 76 moves between an unlocked position
6 (shown in dash in FIG. 3 and sold in FIG. 4) and a locked position (shown in dash in FIG. 3 and
7 sold in FIG. 4)."

8
9 Another key difference of the present invention as opposed to the Gapinski Patent is the
10 pivoting mechanism as illustrated in Figure 5 of the Gapinski Patent. As illustrated in Figure 5,
11 the pivoting mechanism has a bolt on the bottom so that the back cleat member rotates away in
12 the horizontal direction in order to lock the back cleat in place on the road type bicycle cleat;
13 whereas in the present invention as disclosed and claimed, the back portion is pushed away
14 through a spring mechanism and latches by a spring action attaching it onto the back clip. That is
15 the reason that they have a spring shown in the horizontal direction in Figure 5 of the Gapinski
16 Patent. Also referring to Figure 3, the Gapinski Patent does not show a spring mechanism on the
17 back of the pivot but instead, shows a solid piece where the cleat slides in. Also referring to
18 Column 5 beginning on line 1 of the Gapinski Patent, it states "The cleat adapter 22 can be
19 removed from the road style clipless structure 26 typically by twisting the rear edge 46 of the
20 cleat outwardly (away from the crank arm to which the pedal is attached) in the lateral plane (of
21 the top surface of the main body of the pedal) with respect to the pedal 20." Therefore, the cleat
22 is attached and disattached by a rotational mechanism which is why there is the horizontal spring
23 illustrated in Figure 5 of the Gapinski Patent. This is totally different from the way in which the
24 cleat is received and locked in place by the spring action from the rear portion of the flip-flop
25 pedal of the present invention.

26
27 To further emphasize the point, even though the Appellant believes that the way the
28 present Claims 5 through 8 are worded is allowable, Appellant suggests some minor wording

1 language in Claims 5 through 8 in element (b) as illustrated in Appendix II wherein the words
2 “moves away” are eliminated and the words “rotates outwardly in a vertical plane” are
3 substituted therefore to further emphasize this key different feature of the present invention.
4

5 Therefore, because of the fact that the Gapinski Patent itself should not be cited as prior
6 art for the reasons as set forth above and further because of the fact that the present invention as
7 now disclosed and claimed operates totally differently from the way the cleat is inserted and
8 removed from the flip-flop pedal, the present invention is totally different and discloses key
9 fundamental differences.
10

11 Further, as is evidenced by the only independent claim of the Gapinski Patent, the third
12 element of Claim 1 recites “a locking mechanism to lock said cleat adapter to said base member,
13 said locking mechanism including a pin extending from said base member and a recess formed
14 on said main body for receiving said pin.” This is a key feature of the Gapinski Patent which is
15 not shown or disclosed or claimed in the present invention and therefore, the Gapinski Patent
16 focuses on a totally different type of attachment apparatus. Clearly, the attachment apparatus in
17 the present invention as discussed above wherein the rear portion of the cleat is pushed against
18 the spring loaded rear portion of the flip-flop which then springs back and locks in place is totally
19 different from the sidewise action of the Gapinski Patent and also, from the fact that the Gapinski
20 Patent requires the locking pin to retain it in place. Therefore, Gapinski is totally different from
21 the present invention.
22

23 Therefore, by way of example referring to Claim 5 (which also has the same key
24 limitations in Claims 6 and 7), the fourth line of Claim element (b) reads “The first top rear
25 spring-loaded retaining plate having a recess for receiving a rear tongue of the road type bicycle
26 shoe cleat and when a force is applied to the first top rear spring-loaded retaining plate, the first
27 top rear spring-loaded retaining plate moves away from said main body such that the rear tongue
28 engages the recess of the first top rear spring-loaded retaining plate, where the first top rear

1 spring-loaded retaining plate springs back into a locking position, and thereby locks the rear
2 tongue of the road type bicycle shoe cleat thereto;”. As explained in detail above, this feature is
3 not disclosed in the Gapinski Patent and Gapinski’s pedal operates in a totally different way.
4 Referring to Appendix II, to make it more clear, the words “moves away” have been removed
5 and the words “rotates outwardly on a vertical plane” have been substituted therefor. Clearly,
6 this is supported by the entire patent text and the discussion as already set forth in this brief and
7 this will only make it more clear as to why the Appellant’s device is clearly different from the
8 device as shown in the Gapinski Patent and is not made obvious from the device as shown in the
9 Gapinski Patent because the Gapinski device operates totally differently on this key feature. The
10 same limitations are in Claim 6 and Claim 7 and therefore, similarly, for the same reason, since
11 these key features are different, Claims 5, 6 and 7 are patentable over Gapinski. Claim 8 is
12 simply a dependent claim on Claim 7.

13
14 The Examiner also has cited United States Patent 5,692,415 to Lin. Not much is said
15 about Lin in the Gapinski Patent but it is merely cited as being of reference. An examination of
16 the Lin Patent clearly shows very key differences including the following. First, it is not
17 designed to accommodate a road type bicycle shoe cleat and a mountain bicycle type shoe cleat.
18 Further, while it does show some spring action, as stated in the Lin Patent, “FIG. 1 shows a prior
19 art bicycle pedal designed for the coupling of the sole of a bicycle shoe. The structure of bicycle
20 pedal comprises two fixed locating plates and two movable locating plates for the coupling of the
21 sole of the bicycle shoe. The movable locating plates are respectively forced toward the fixed
22 locating plates by springs. The spring force of each is controlled by a respective stop plate and a
23 respective screw bolt. This structure of bicycle pedal is complicated, and needs much installation
24 space. When adjusting the spring force, the stop plate tends to fall out of place, causing the
25 springs unable to be forced into place.” Therefore, it is clear that the type of device that is being
26 disclosed by Lin shows springs in a different location from the present invention and also
27 obviously did not work. The device that Lin used to solve this problem is a very long
28 complicated device including stop plates as set forth in the very long independent claim.

1 Therefore, the Lin Patent does not disclose or make obvious the present invention as now
2 claimed.

3
4 Therefore, because of these key critical differences, the key features of the present
5 invention are not shown in the Gapinski Patent.

6
7 In the absence of any showing in the prior art references, "it is impermissible to use the
8 claimed invention to serve as an instruction manual or template to piece together the teachings of
9 the prior art so that the claimed invention is rendered obvious." In re Fritch, 23 U.S.P.Q.2d 1780
10 (Fed. Cir. 1992); In re Laskowski, 871 F.2d 115, 10 U.S.P.Q.2d 1397 (Fed. Cir. 1992). "The
11 mere fact that the prior art could be so modified would not have made the modification obvious
12 unless the prior art suggested the desirability of the modification." In re Gordon, 733 F.2d 900,
13 221 U.S.P.Q. 1125 (Fed. Cir. 1984); In re Imperato, 486 F.2d 585, 587, 179 U.S.P.Q. 730, 732
14 (C.C.P.A. 1973). Therefore, the Appellant's invention is a completely different invention as
15 compared to the Gapinski reference and is not obvious based on the Gapinski reference. The
16 Examiner is using the Gapinski reference as a template to argue that the present invention is
17 obvious and this is impermissible based upon the above cited cases.

18
19 Therefore, it is abundantly clear that the present invention as presently claimed (including
20 the newly modified few words if the Patent Office Board of Appeals will accept it) is clearly
21 patentable over the Gapinski reference and therefore, the present invention Claims 5 through 8
22 should be allowed.

23 24 **CONCLUSION**

25 For the foregoing reasons, it is submitted that the Appellant's Application is allowable
26 and that Claims 5 through 8 are allowable in their original format as presently submitted in the
27 Response to Office Action and if the Patent Office Board of Appeals deems it appropriate,
28 allowable with the minor wording modification as set forth in Appendix II, but either way are not

1 made obvious under 35 U.S.C. § 102(e) in view of the Gapinski Patent. Further, the Gapinski
2 Patent never should be cited as a reference because it is not prior art to the Appellant 's invention
3 because Appellant should receive credit for the filing date of the grandparent case where the
4 disclosures are clearly made. The claims clearly define over the Gapinski Patent and further, the
5 Gapinski Patent never should be used as prior art to begin with. Accordingly, the Patent Office
6 Board of Appeals is respectfully requested to reverse the Examiner and to permit the patent to
7 issue with all Claims 5 through 8.

8
9 Date: December 29, 2003

Respectfully submitted,

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APPENDIX I: CLAIMS 5 THROUGH 8 ON APPEAL

The following is the text of the claims on appeal, which are Claims 5 through 8:

5. A flip-flop bicycle pedal, comprising:

- a. a main body pivotable about a transverse axis and having a spindle bolt for connecting to a bicycle, a top side and a bottom side;
- b. said top side having a first top toe cleat clamp which conforms to a bottom of a road type bicycle shoe cleat, the first top toe cleat clamp having a front recess for receiving a front tongue of the road type bicycle shoe cleat, said top side also having a first top rear spring-loaded retaining plate pivotable on said main body, the first top rear spring-loaded retaining plate having a recess for receiving a rear tongue of the road type bicycle shoe cleat and when a force is applied to the first top rear spring-loaded retaining plate, the first top rear spring-loaded retaining plate moves away from said main body such that the rear tongue engages the recess of the first top rear spring-loaded retaining plate, where the first top rear spring-loaded retaining plate springs back into a locking position, and thereby locks the rear tongue of the road type bicycle shoe cleat thereto; and
- c. said bottom side having a second bottom toe cleat clamp which is smaller than said first top toe cleat clamp of said top side and conforms to a bottom of a mountain bicycle type shoe cleat, the second bottom toe cleat clamp of said bottom side having a front locking member located adjacent to said front top rear spring-loaded retaining plate of said top side for receiving a front tongue of the mountain bicycle type shoe cleat, said bottom side also having a second bottom rear spring-loaded retaining member pivotable on said main body such that a rear tongue of the mountain bicycle type shoe cleat engages inside a recess of the second bottom rear spring-loaded retaining plate of said bottom side, where the second bottom rear spring-loaded plate of said bottom side springs back into a locking position, and thereby locks the rear tongue of the mountain bicycle type

shoe cleat thereto.

6. A bicycle pedal, comprising:

- a. a main body pivotable about a transverse axis and having a spindle bolt for connecting to a bicycle, a first cleat clamp side and a second cleat clamp side;
- b. said first cleat clamp side conforming to a bottom of a road type bicycle shoe cleat and having a recess for receiving a first tongue of the road type bicycle shoe cleat, said first cleat clamp side also having a first spring-loaded retaining plate pivotable on said main body for receiving a second tongue of the road type bicycle shoe cleat and when a force is applied to the first spring-loaded retaining plate, the first spring-loaded retaining plate moves away from said main body such that the second tongue engages the first spring-loaded retaining plate, where the first spring-loaded retaining plate springs back into a locking position, and thereby locks the second tongue of the road type bicycle shoe cleat thereto; and
- c. said second cleat clamp side being smaller than said first cleat clamp side and conforming to a bottom of a mountain bicycle type shoe cleat, said second cleat clamp side having a locking member located adjacent to said first spring-loaded retaining plate of said first cleat clamp side for receiving a first tongue of the mountain bicycle type shoe cleat, said second cleat clamp side also having a second spring-loaded retaining member pivotable on said main body such that a second tongue of the mountain bicycle type shoe cleat engages the second spring-loaded retaining member of said second cleat clamp side, where the second spring-loaded retaining member of said second cleat clamp side springs back into a locking position, and thereby locks the second tongue of the mountain bicycle type shoe cleat thereto.

7. A bicycle pedal, comprising:

- a. a main body pivotable about a transverse axis and having a spindle bolt for connecting to a bicycle, a first side and a second side;
- b. said first side conforming to a bottom of a road type bicycle shoe cleat and having means for receiving a first tongue of the road type bicycle shoe cleat, said first side also having a first spring-loaded retaining plate pivotable on the main body for receiving a second tongue of the road type bicycle shoe cleat and when a force is applied to the first spring-loaded retaining plate, the first spring-loaded retaining plate moves away from said main body such that the second tongue is retained within the spring-loaded retaining plate, where the first spring-loaded retaining plate moves back into a locking position, and thereby locks the second tongue of the road type bicycle shoe cleat thereto; and
- c. said second side conforming to a bottom of a mountain bicycle type shoe cleat and having a locking member for receiving a first tongue of the mountain bicycle type shoe cleat, said second side also having a second spring-loaded retaining member pivotable on said main body such that a second tongue of the mountain bicycle type shoe cleat is retained within the second spring-loaded retaining member of said second side, where the second spring-loaded retaining member of said second side moves back into a locking position, and thereby locks the second tongue of the mountain bicycle type shoe cleat thereto.

8. The bicycle pedal in accordance with Claim 7, wherein said second side is smaller than said first side.

APPENDIX II: CLAIMS 5 THROUGH 8 ON APPEAL

The following is the text of the claims on appeal, which are Claims 5 through 8 with modifications:

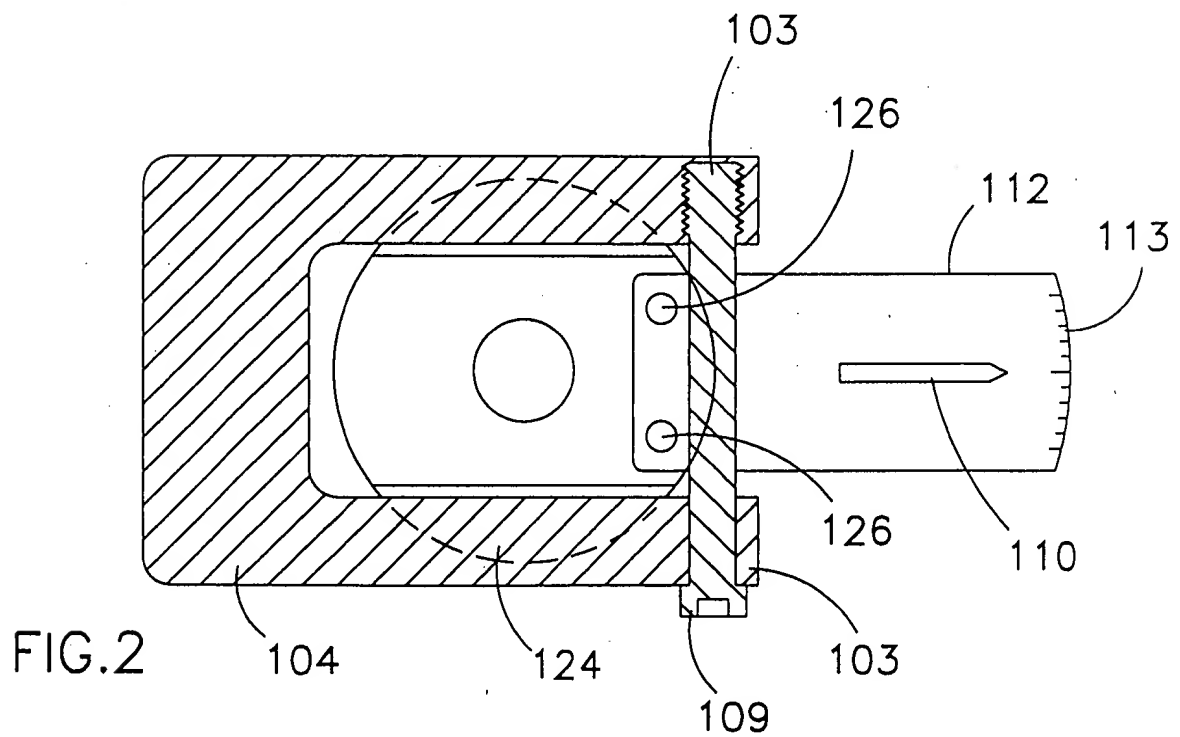
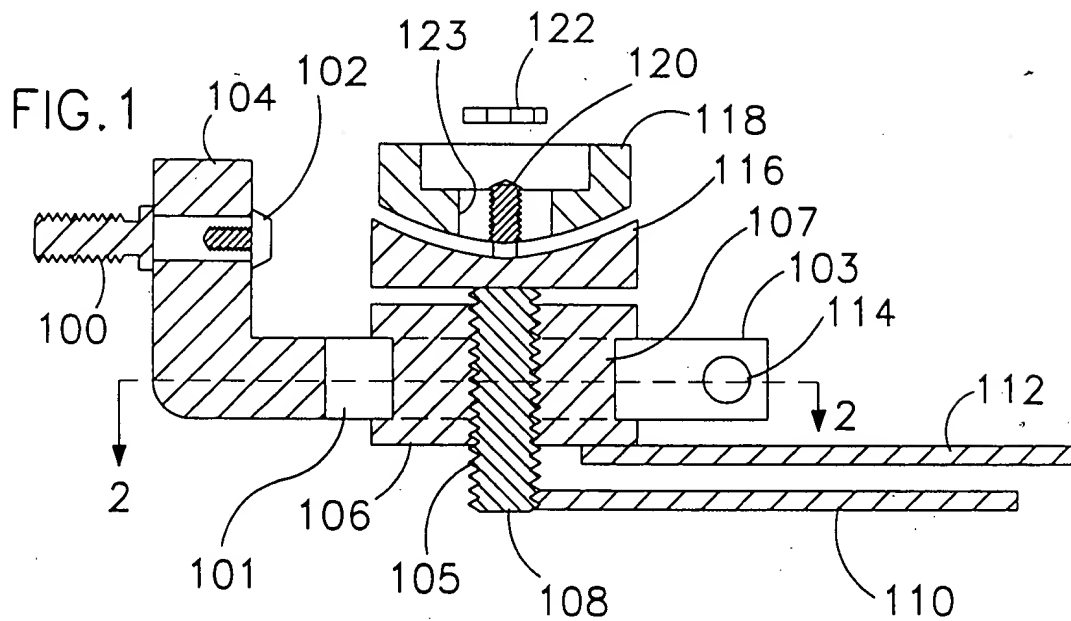
5. (Proposed Currently Amended) A flip-flop bicycle pedal, comprising:
- a. a main body pivotable about a transverse axis and having a spindle bolt for connecting to a bicycle, a top side and a bottom side;
 - b. said top side having a first top toe cleat clamp which conforms to a bottom of a road type bicycle shoe cleat, the first top toe cleat clamp having a front recess for receiving a front tongue of the road type bicycle shoe cleat, said top side also having a first top rear spring-loaded retaining plate pivotable on said main body, the first top rear spring-loaded retaining plate having a recess for receiving a rear tongue of the road type bicycle shoe cleat and when a force is applied to the first top rear spring-loaded retaining plate, the first top rear spring-loaded retaining plate ~~moves away~~ rotates outwardly on a vertical plane from said main body such that the rear tongue engages the recess of the first top rear spring-loaded retaining plate, where the first top rear spring-loaded retaining plate springs back into a locking position, and thereby locks the rear tongue of the road type bicycle shoe cleat thereto; and
 - c. said bottom side having a second bottom toe cleat clamp which is smaller than said first top toe cleat clamp of said top side and conforms to a bottom of a mountain bicycle type shoe cleat, the second bottom toe cleat clamp of said bottom side having a front locking member located adjacent to said front top rear spring-loaded retaining plate of said top side for receiving a front tongue of the mountain bicycle type shoe cleat, said bottom side also having a second bottom rear spring-loaded retaining member pivotable on said main body such that a rear tongue of the mountain bicycle type shoe cleat engages inside a recess of the second bottom rear spring-loaded retaining plate of said bottom side, where the

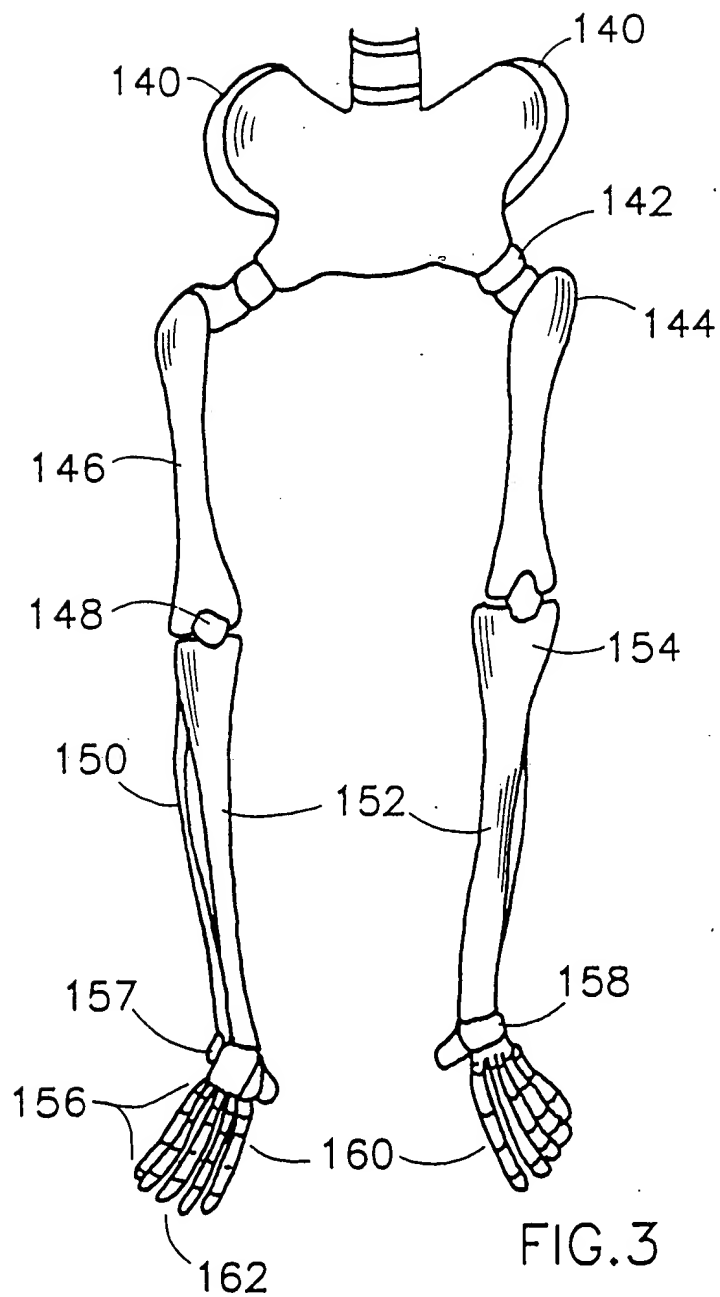
second bottom rear spring-loaded plate of said bottom side springs back into a locking position, and thereby locks the rear tongue of the mountain bicycle type shoe cleat thereto.

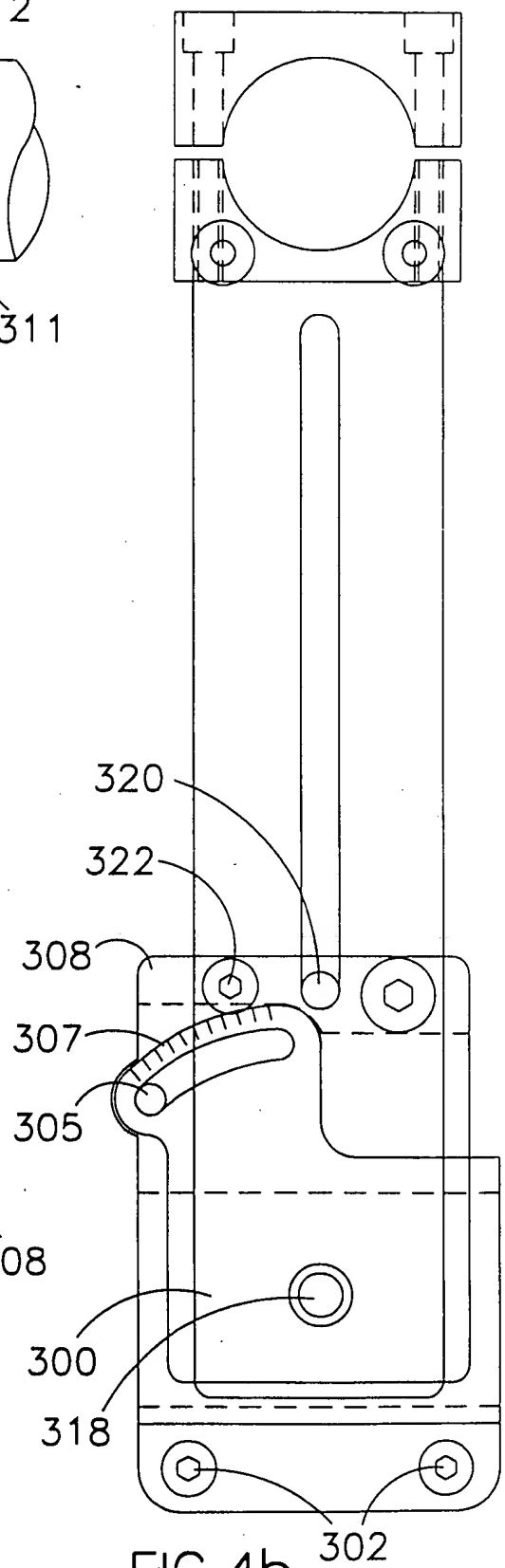
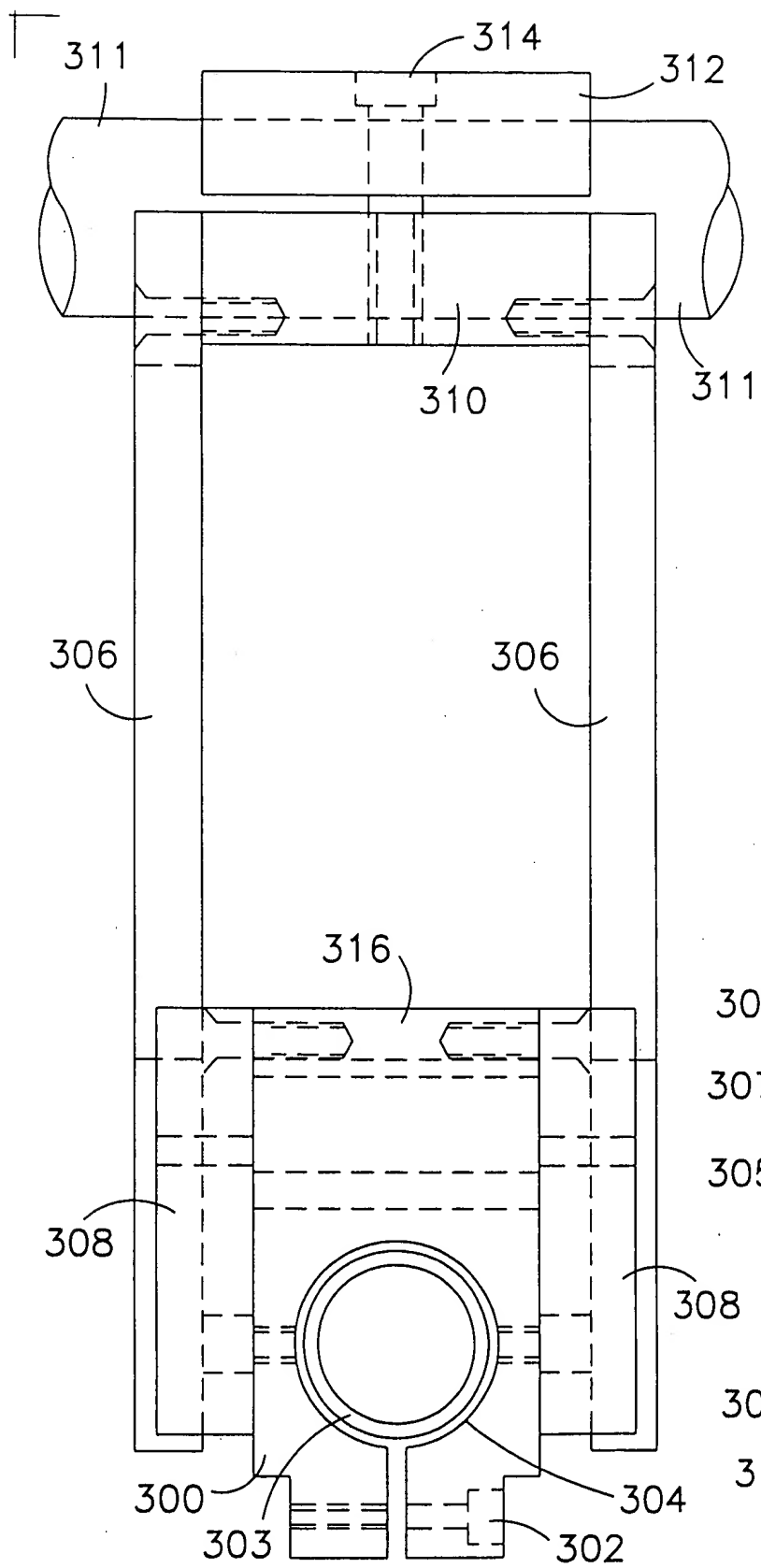
6. (Proposed Currently Amended) A bicycle pedal, comprising:

- a. a main body pivotable about a transverse axis and having a spindle bolt for connecting to a bicycle, a first cleat clamp side and a second cleat clamp side;
- b. said first cleat clamp side conforming to a bottom of a road type bicycle shoe cleat and having a recess for receiving a first tongue of the road type bicycle shoe cleat, said first cleat clamp side also having a first spring-loaded retaining plate pivotable on said main body for receiving a second tongue of the road type bicycle shoe cleat and when a force is applied to the first spring-loaded retaining plate, the first spring-loaded retaining plate ~~moves away~~ rotates outwardly on a vertical plane from said main body such that the second tongue engages the first spring-loaded retaining plate, where the first spring-loaded retaining plate springs back into a locking position, and thereby locks the second tongue of the road type bicycle shoe cleat thereto; and
- c. said second cleat clamp side being smaller than said first cleat clamp side and conforming to a bottom of a mountain bicycle type shoe cleat, said second cleat clamp side having a locking member located adjacent to said first spring-loaded retaining plate of said first cleat clamp side for receiving a first tongue of the mountain bicycle type shoe cleat, said second cleat clamp side also having a second spring-loaded retaining member pivotable on said main body such that a second tongue of the mountain bicycle type shoe cleat engages the second spring-loaded retaining member of said second cleat clamp side, where the second spring-loaded retaining member of said second cleat clamp side springs back into a locking position, and thereby locks the second tongue of the mountain bicycle type shoe cleat thereto.

- 25 7. (Proposed Currently Amended) A bicycle pedal, comprising:
- a. a main body pivotable about a transverse axis and having a spindle bolt for
 connecting to a bicycle, a first side and a second side;
- b. said first side conforming to a bottom of a road type bicycle shoe cleat and having
 means for receiving a first tongue of the road type bicycle shoe cleat, said first
30 side also having a first spring-loaded retaining plate pivotable on the main body
 for receiving a second tongue of the road type bicycle shoe cleat and when a force
 is applied to the first spring-loaded retaining plate, the first spring-loaded
 retaining plate ~~moves away~~ rotates outwardly on a vertical plane from said main
 body such that the second tongue is retained within the spring-loaded retaining
35 plate, where the first spring-loaded retaining plate moves back into a locking
 position, and thereby locks the second tongue of the road type bicycle shoe cleat
 thereto; and
- c. said second side conforming to a bottom of a mountain bicycle type shoe cleat and
 having a locking member for receiving a first tongue of the mountain bicycle type
40 shoe cleat, said second side also having a second spring-loaded retaining member
 pivotable on said main body such that a second tongue of the mountain bicycle
 type shoe cleat is retained within the second spring-loaded retaining member of
 said second side, where the second spring-loaded retaining member of said second
 side moves back into a locking position, and thereby locks the second tongue of
45 the mountain bicycle type shoe cleat thereto.
8. (Original) The bicycle pedal in accordance with Claim 7, wherein said second side is
 smaller than said first side.







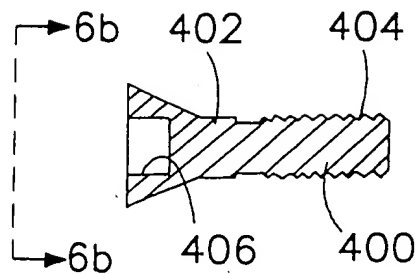


FIG. 5a

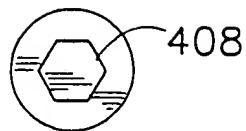


FIG. 5b

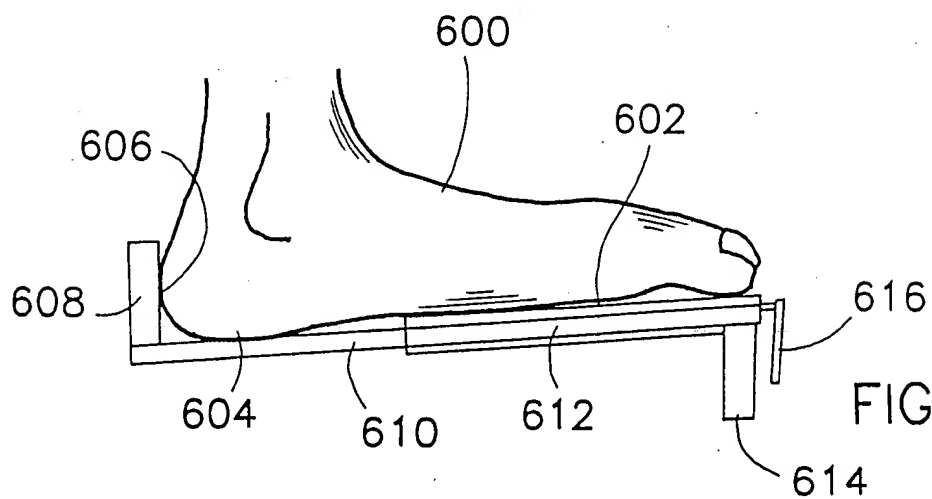


FIG. 6a

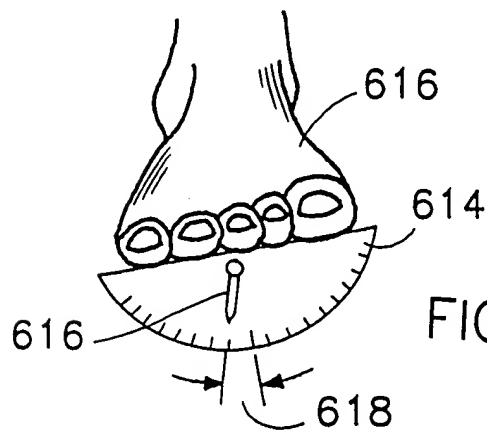


FIG. 6b

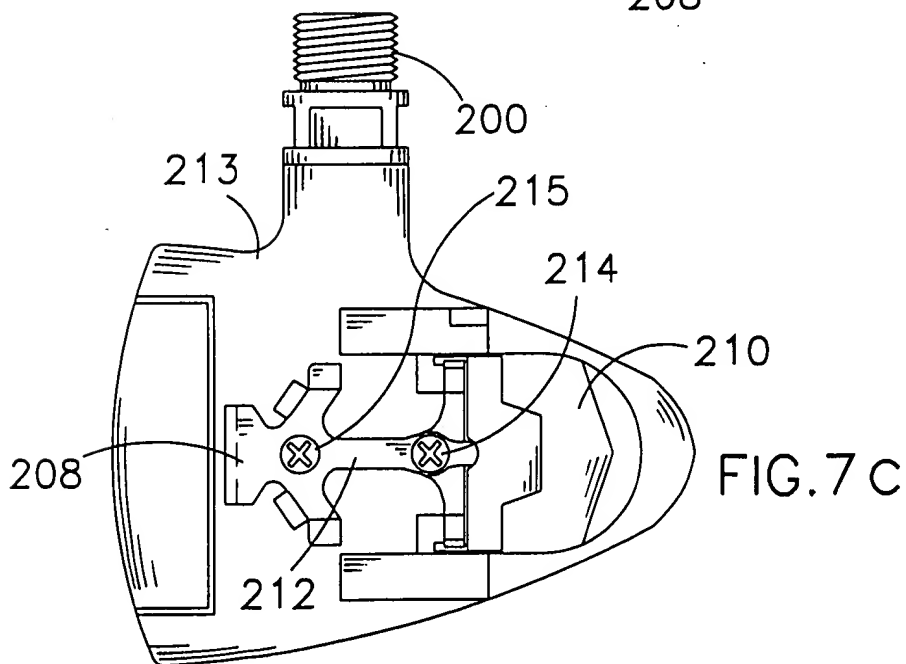
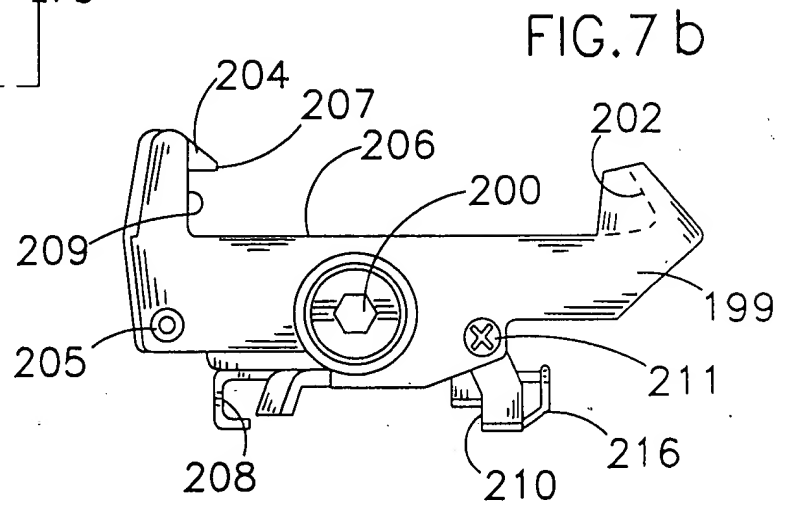
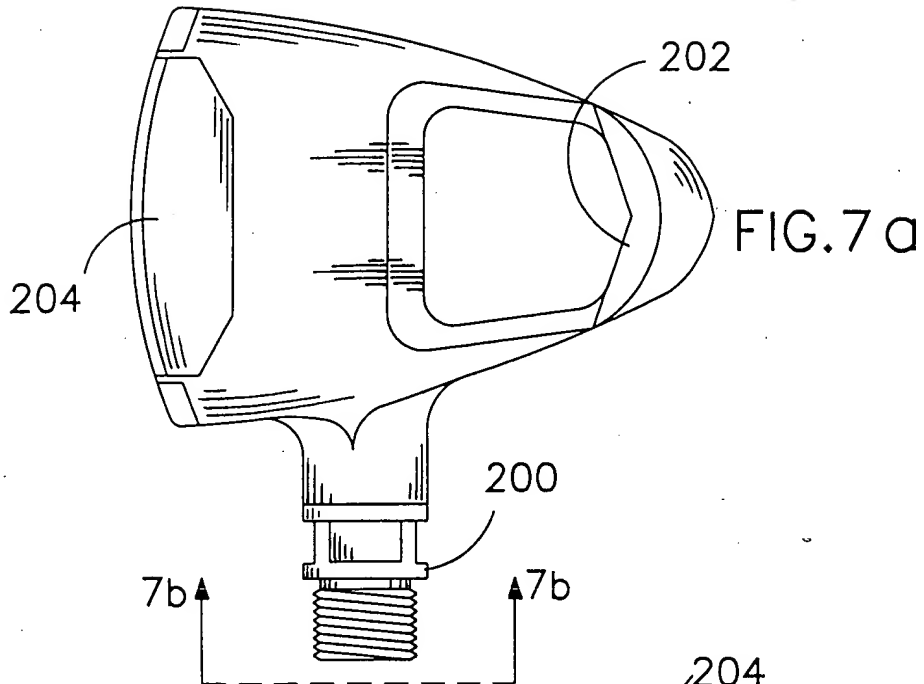


FIG. 8 a
(PRIOR ART)

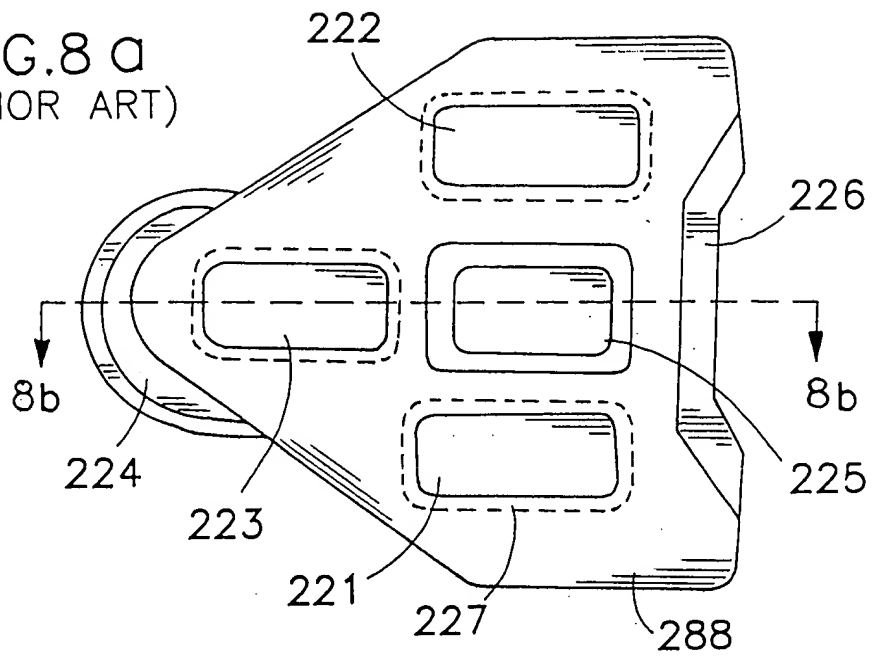
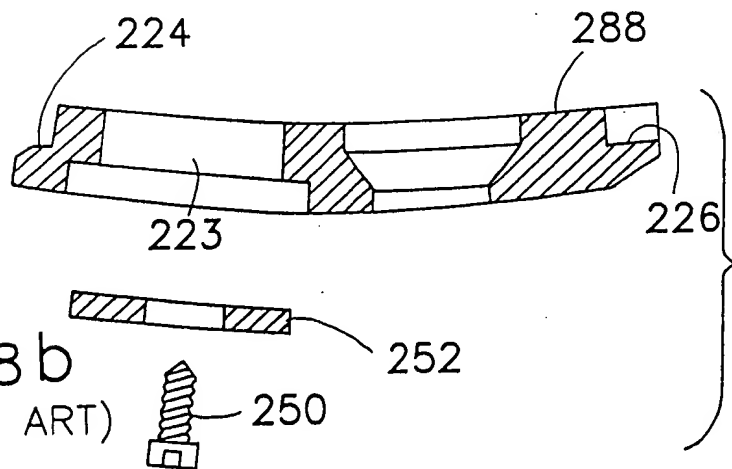


FIG. 8 b
(PRIOR ART)



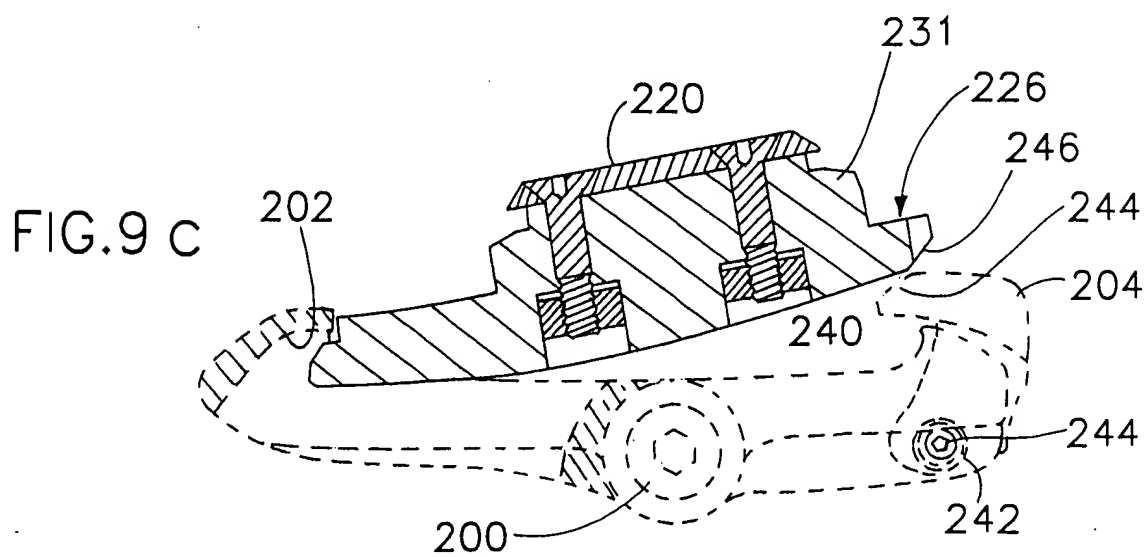
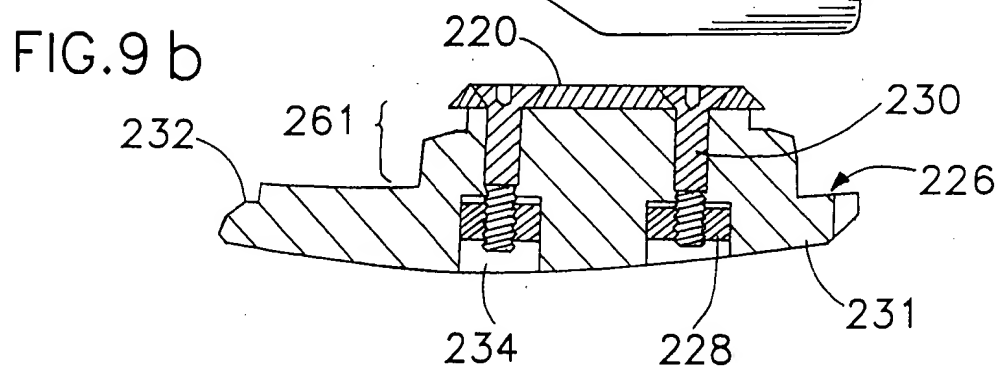
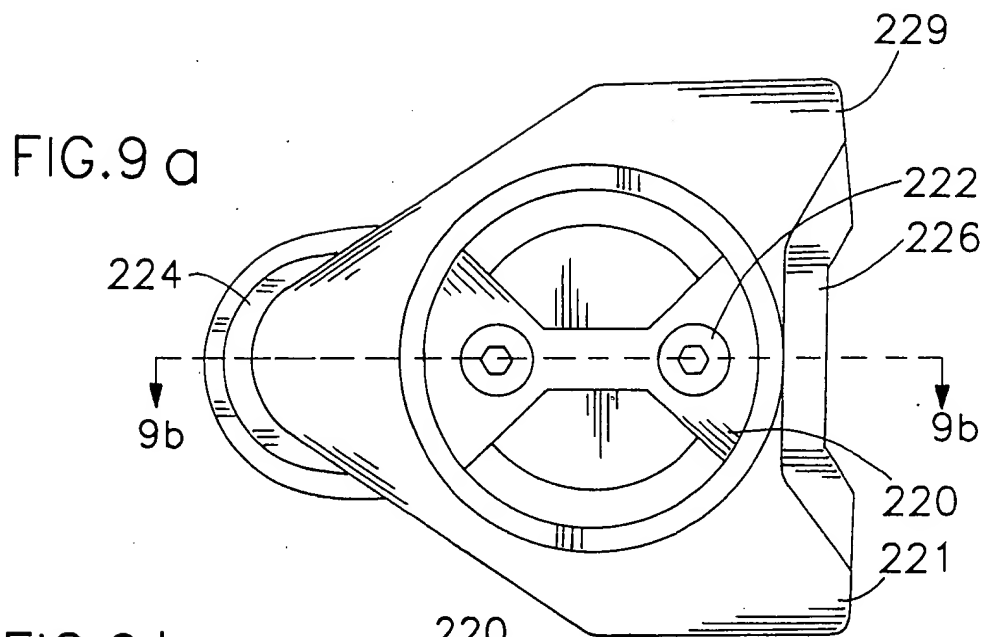


FIG.10 a

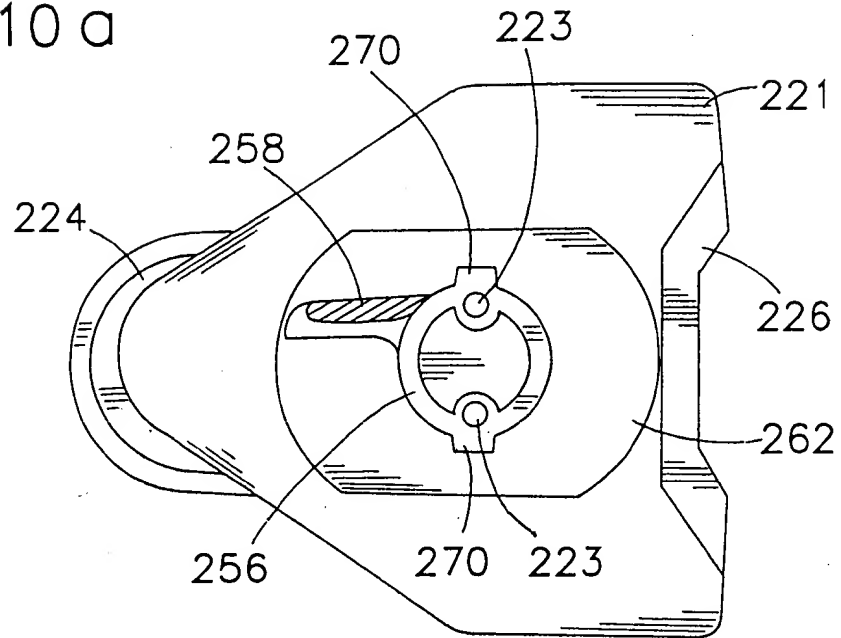
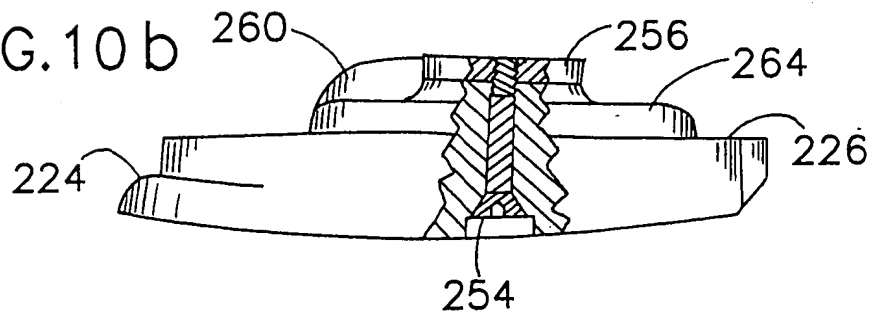


FIG.10 b



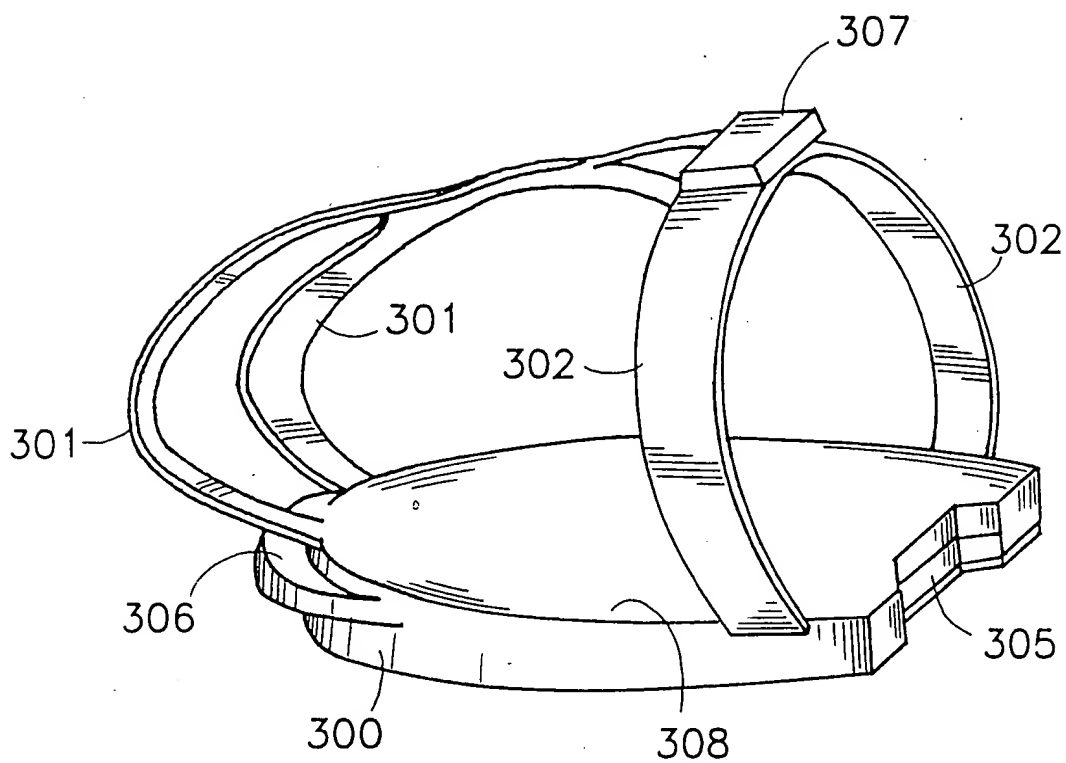


FIG. 11
(PRIOR ART)

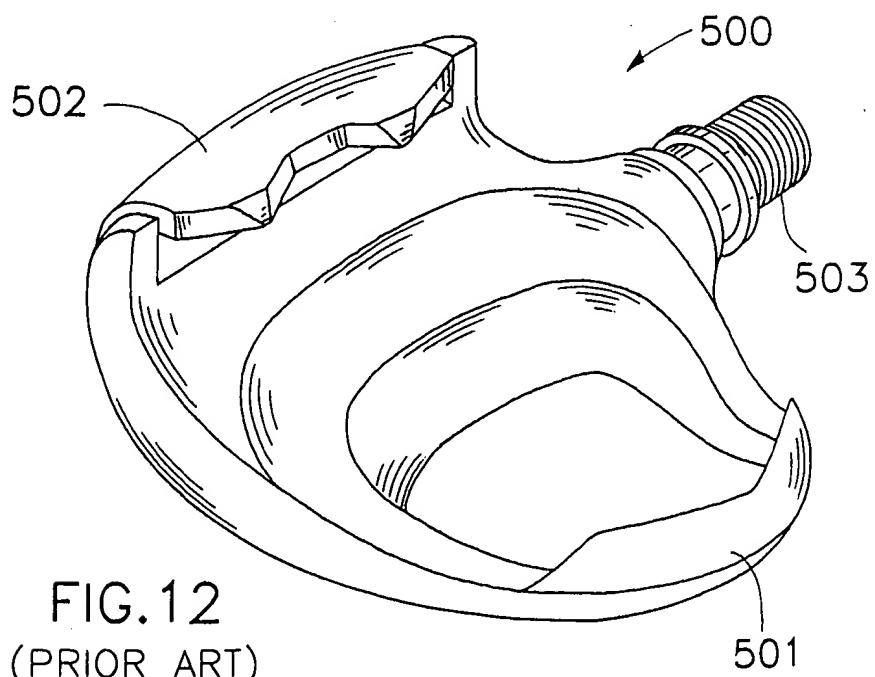
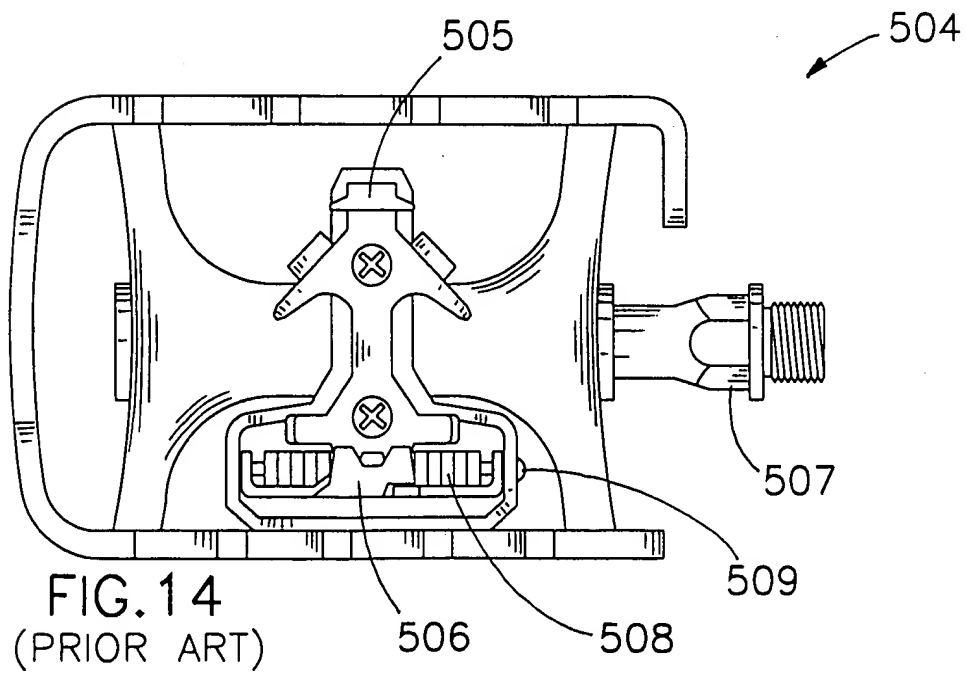
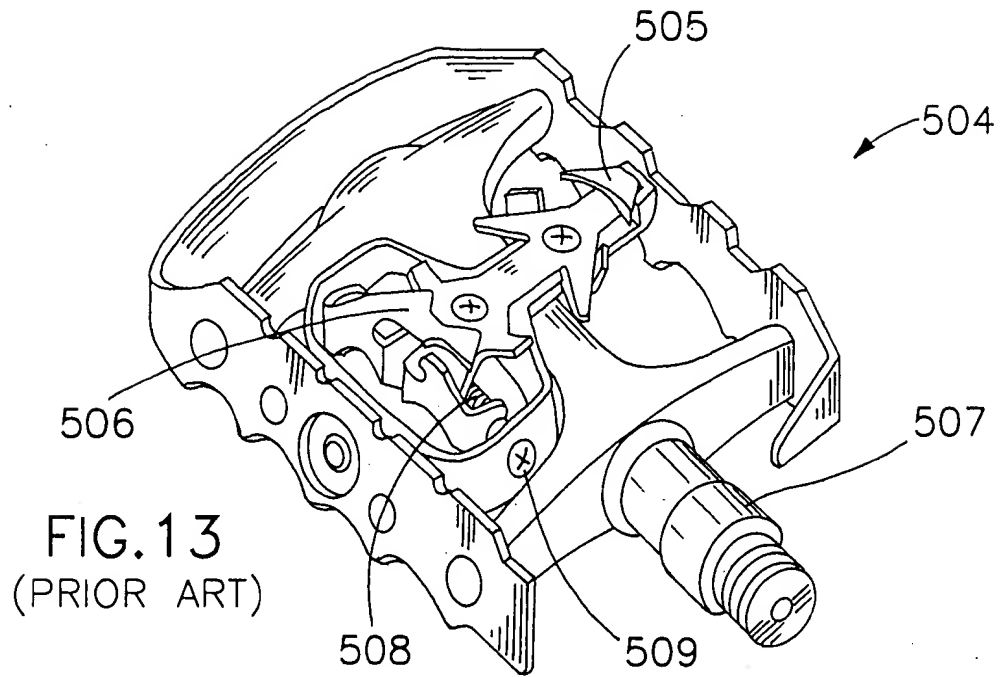
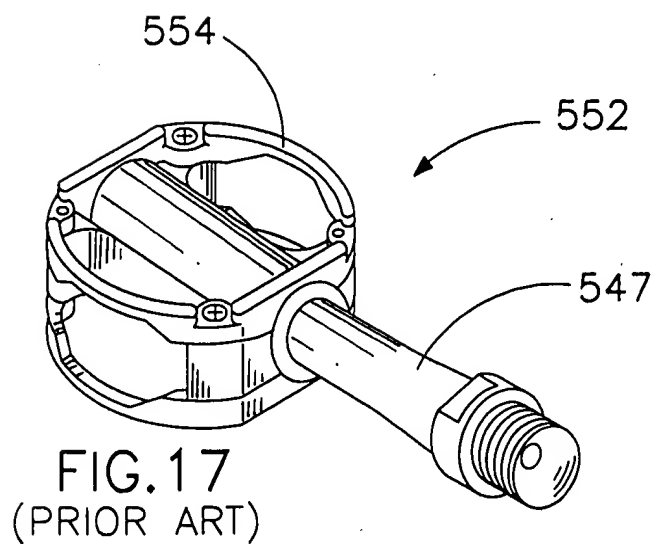
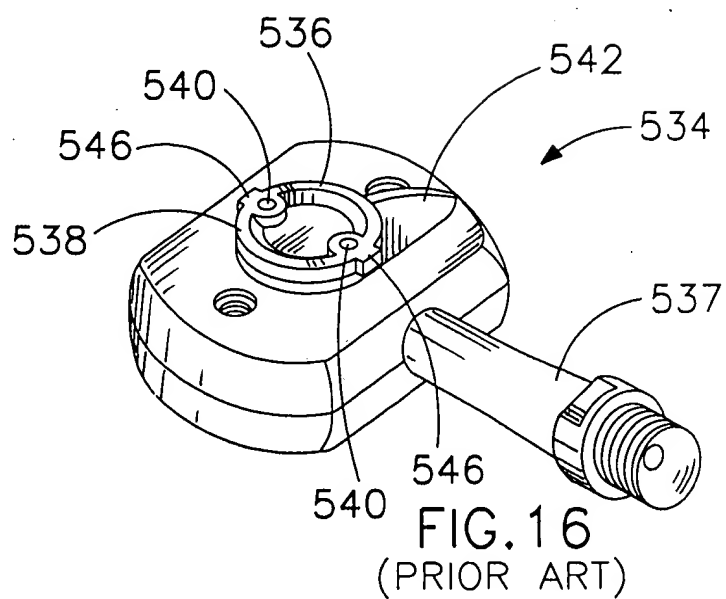
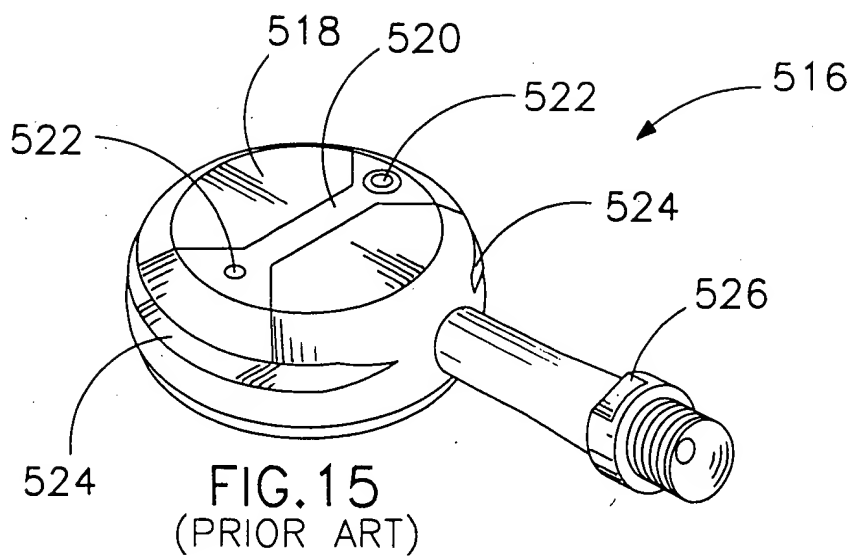
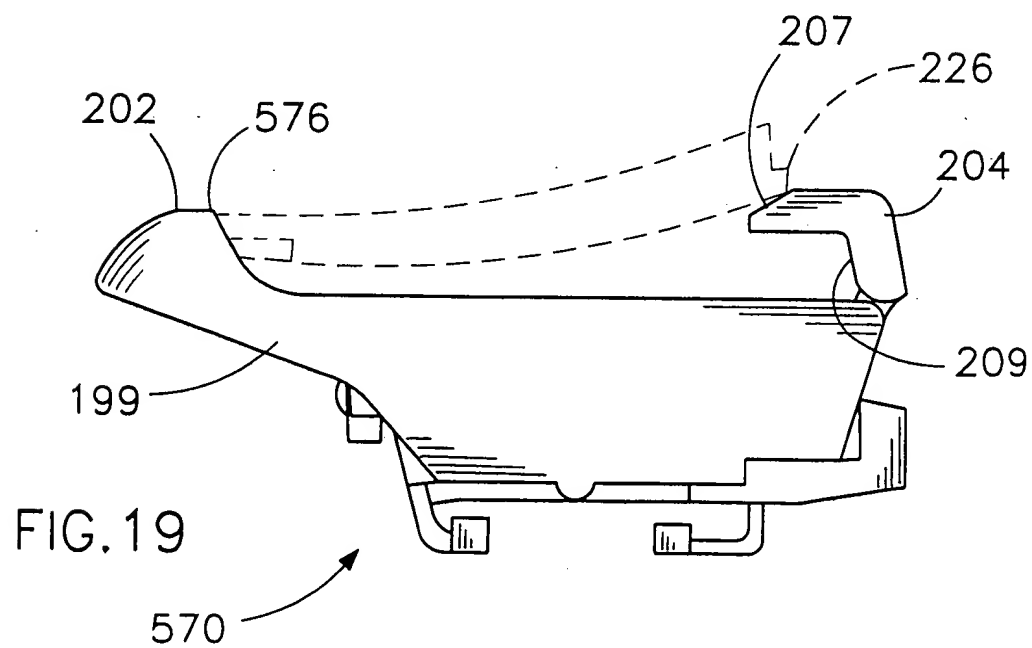
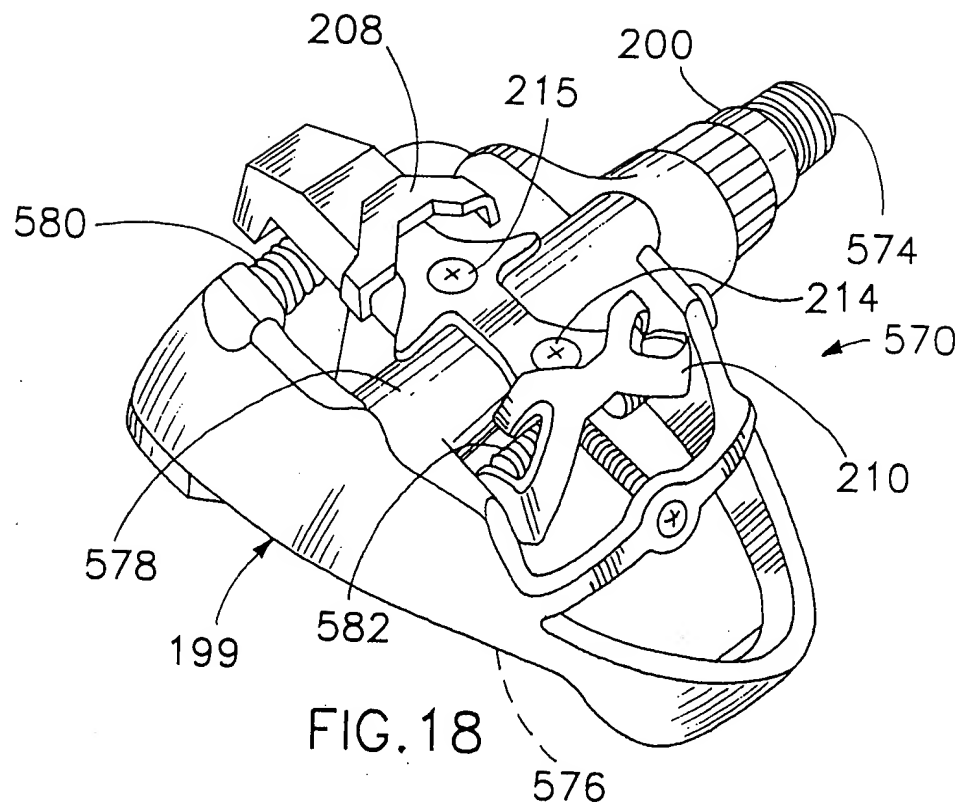
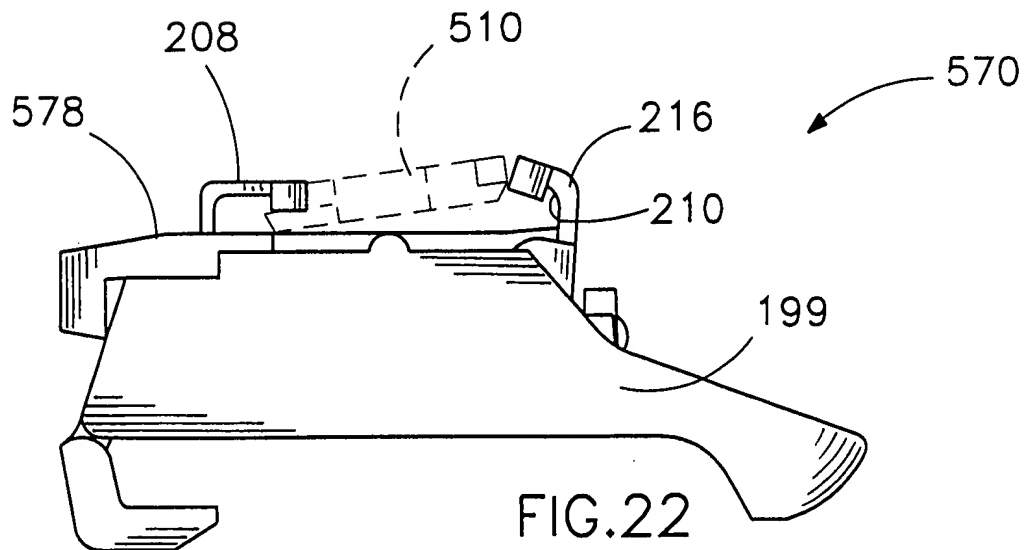
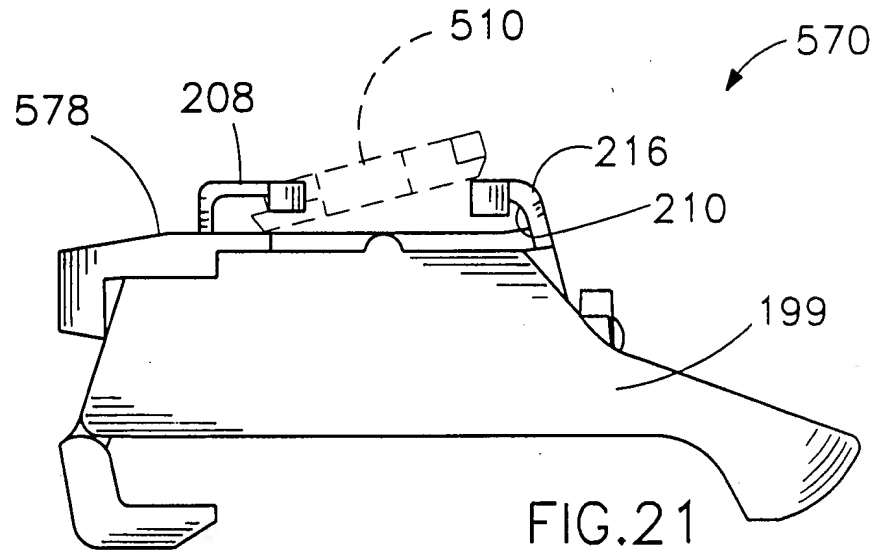
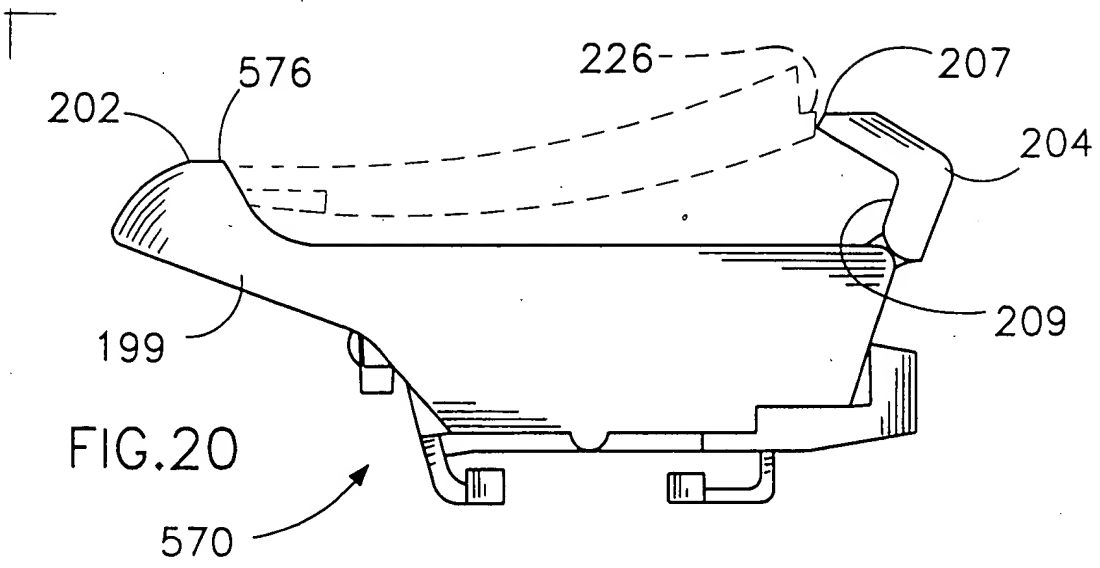


FIG. 12
(PRIOR ART)









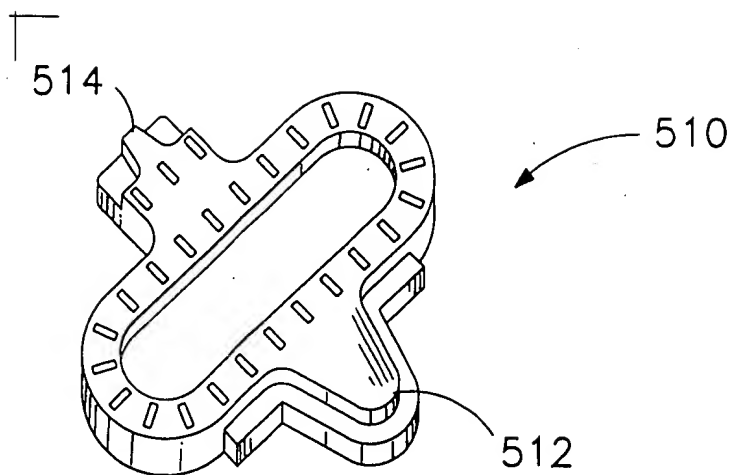


FIG. 23
(PRIOR ART)

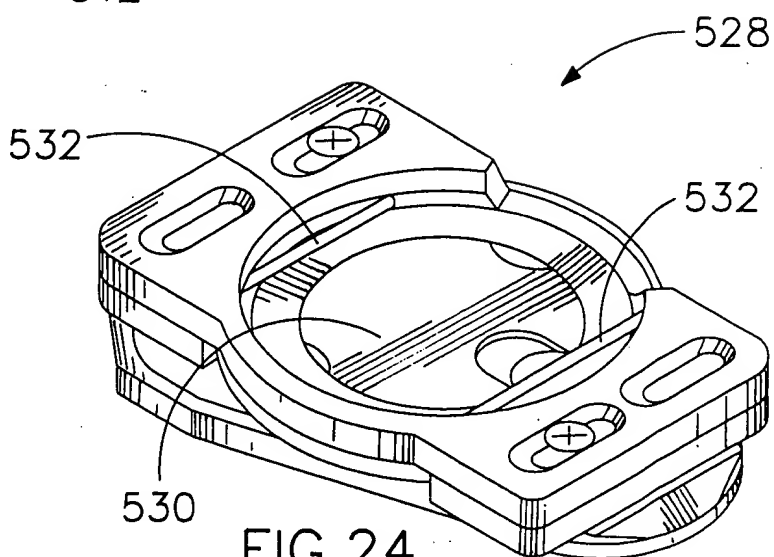


FIG. 24
(PRIOR ART)

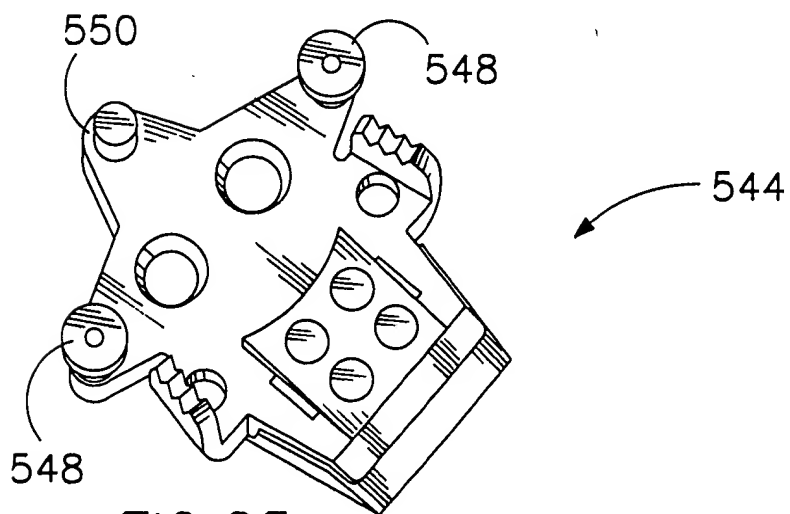


FIG. 25
(PRIOR ART)

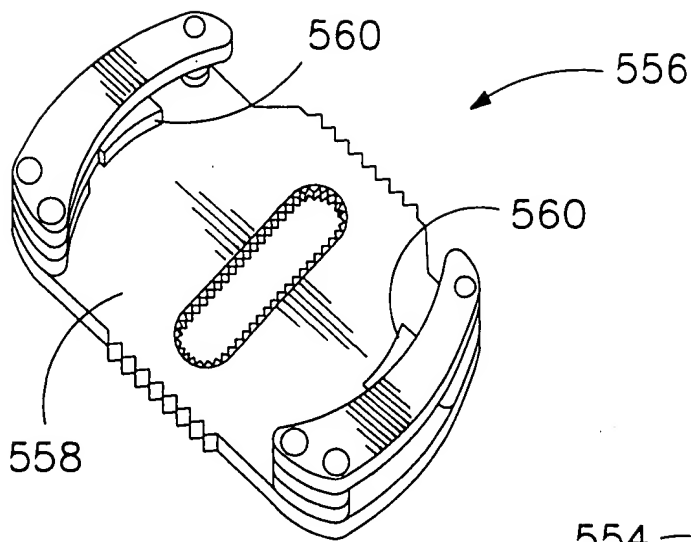


FIG. 26
(PRIOR ART)

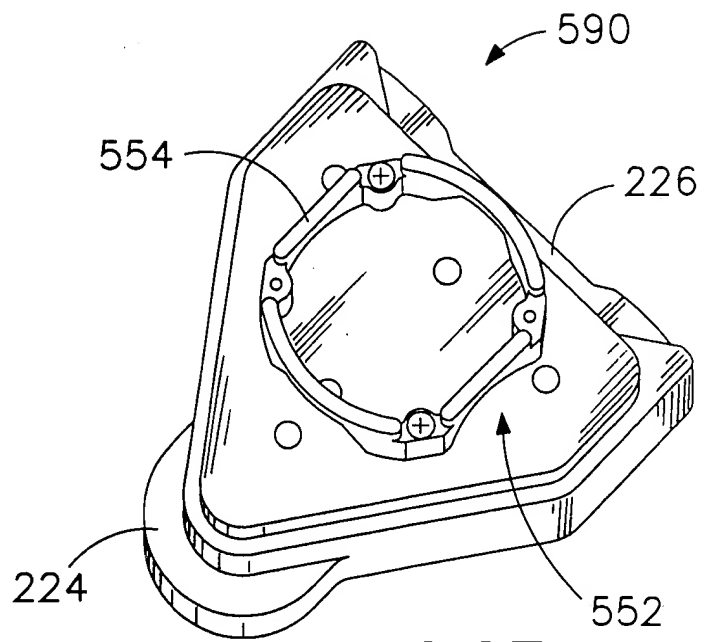


FIG. 27

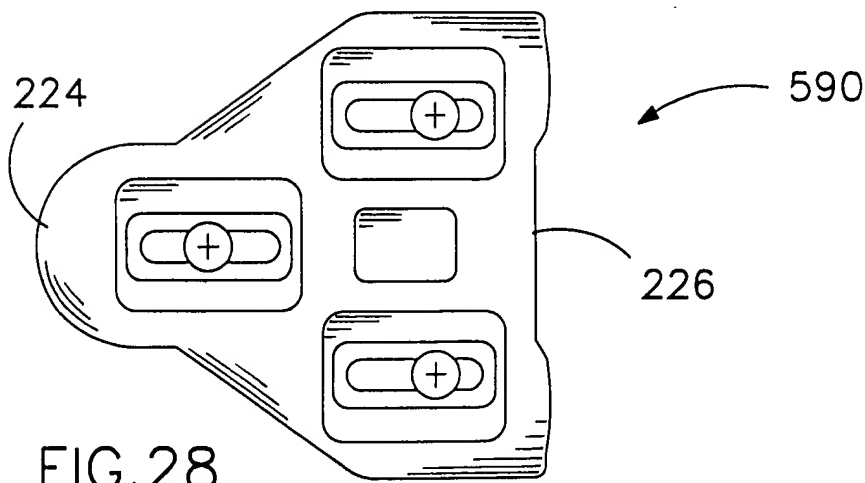


FIG. 28